

## MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:45 a.m. on March 25, 2003, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Gordon Self, Revisor of Statutes Office  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Marlee Carpenter, Kansas Chamber of Commerce & Industry  
Jim Weisgerber, Kansas Department of Revenue

Others attending: See attached list.

Senator Corbin called the Committee's attention to the minutes of the March 20 and 24 meetings. Senator Buhler moved to approve the minutes of the March 20 and 24, 2003, minutes, seconded by Senator Donovan. The motion carried.

Discussion of **SB 94** continued from March 24 meeting:

On behalf of the Kansas Chamber of Commerce and Industry, the Kansas Livestock Association, and the Kansas Farm Bureau, Marlee Carpenter appeared in opposition to the amendments to **SB 94** offered by the Department of Revenue on March 24, contending that they will open the gate to the re-establishment of inheritance taxes on Class A and B heirs in the future and will essentially make the current "pick up" tax a permanent, free standing estate tax. She noted that the proposed amendments go beyond what was previously discussed by the Committee and supported by conferees. She contended that the succession tax should be repealed rather than "fixed" and that the state should adopt the federal government's philosophy of phasing out estate taxes. She commented that the current "pick up" tax will continue to generate approximately \$50 million through Fiscal Year 2010 and urged the committee not to act on any free standing estate tax as more time is needed for an extensive examination of the issues. (Attachment 1)

Senator Lee moved to reinstate the original language repealing the succession tax in SB 94 and to add enforcement language for the current estate tax as originally proposed by the Department of Revenue, seconded by Senator Clark. Following committee discussion, the motion carried.

Discussion of **SB 170** continued from March 24 meeting:

Jim Weisgerber, Kansas Department of Revenue, distributed copies of new amendments to **SB 170** drafted by the Department after the March 24 meeting. (Attachment 2) Noting that most of the amendments regard reorganization and clarification, he briefly explained the amendments in each section and the purpose for the addition of new sections.

Senator Clark moved to adopt the proposed amendments as Substitute for SB 170, seconded by Senator Lee. Following committee discussion, the motion carried.

The meeting was adjourned at 11:20 a.m.

No further meetings are scheduled.



**TESTIMONY**

To: Senate Committee on Assessment and Taxation

From: Marlee Carpenter, Director of Taxation and Small Business

Date: March 25, 2003

Re: Inheritance, Succession, and Estate Taxes

In order to expedite the discussions today, I am appearing on behalf of the Kansas Chamber of Commerce and Industry, the Kansas Livestock Association, and the Kansas Farm Bureau. Please recall that each of these organizations has participated in the estate, inheritance, and succession tax discussions to date.

We are disappointed by the amendments offered yesterday by the Kansas Department of Revenue (Department). It is our understanding from the discussions yesterday that the amendments would 1) create a perpetual inheritance on class C heirs; 2) would make the current "pick-up" tax into a permanent free-standing estate tax and 3) provide some additional enforcement provisions. We oppose these amendments as they go beyond what has been previously discussed by this committee and supported by our groups.

Inheritance and Succession Tax: Please recall that our organizations supported the repeal of inheritance taxes and supported SB 94 repealing the succession tax. Philosophically, our organizations oppose inheritance and succession taxes because they place a financial burden on all types of businesses including farms and ranches. These operations are critical to the financial success of the state. These amendments tax the very entities the state has and should encourage to operate.

We understand the difficulties in enforcement of the succession tax. We submit that it should be repealed rather than "fixed". The amendments reestablish a large body of tax law that we had hoped would be gone forever. We are concerned that these amendments are opening the gate to the reestablishment of inheritance taxes on Class A and B heirs in the future.

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*3-25-03*  
*Attachment 1*

We encourage the committee to reconcile the fiscal impact of the repeal of the succession tax and clarify exactly what revenue will be generated by this amendment. In testimony before this committee and the House Taxation Committee the Department has stated that because of a slowing economy, the valuation of estates is lower resulting in less revenue from this tax. The Department has stated that the number of individuals falling into this class of heir is small. The Department has outlined a need for additional enforcement provisions. The Department estimated yesterday that only \$1 million has been generated to date.

Given these factors, it appears to us that the real fiscal impact of passage of SB 94 is not \$5 to 10 million. We are not certain that these amendments will do anything to change the falling values of estates or the number of individuals affected. We acknowledge the provisions will assist in enforcement, but are not certain what fiscal impact that will have. We understand that the prior revenue projections are incorporated into the budget process. We respectfully submit that these revenue estimates need to be adjusted for what is realistic under the current law or these amendments. In short, we are concerned that the Committee is about to solidify a problem in revenue estimates that was created last year through quick and uninformed passage of an inheritance tax.

Estate Taxes: The amendments offered by the Department are essentially establishing the current "pick up" tax as a permanent free standing estate tax based upon 1987 federal tax thresholds. Please recall that our organizations opposed the adoption of a state freestanding estate tax.

We believe the state should be adopting the philosophy of the federal government in phasing out estate taxes not making them permanent. As stated earlier, estate taxes are a burden on small businesses that are the heart of the economy. Death is not an event that generates revenue. To pay an estate tax, the estate must generate revenue, typically completed by liquidation of an asset. In small business, assets are critical to their continuance. We believe estate taxes place a significant burden on the very institutions the state needs to develop other revenues such as sales and income taxes.

The Committee does not need to adopt any provisions to continue the current "pick up" tax. The Department's own revenue estimates outline that the current pick up tax will continue to generate \$50 million in revenue through FY 2010 (see attached). We strongly encourage the committee not to act on this or any other freestanding estate tax. These issues need time for extensive examination. We want to assure that all federal definitions and provisions of value to Kansans are included in any such state law.

We respectfully request a copy of the fiscal note on this proposal before it is further considered. We are having difficulty understanding the need for this legislation if the current pick up tax is generating \$50 million and is projected to continue to do so.

AN ACT concerning the Kansas withholding tax act; amending K.S.A. . 79-3295, 79-3298, 79-3299, 79-32,100, 79-32,100a, 79-32,100b and 79-32,100c and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 79-3295 is hereby amended to read as follows: 79-3295. (a) The term "employee" means a resident of this state as defined by subsection (b) of K.S.A. 79-32,109, and amendments thereto, performing services for an employer either within or without the state and a nonresident performing services within this state, and includes an officer, employee or elected official of the United States, a state, territory, or any political subdivision thereof or any agency or instrumentality thereof, and an officer of a corporation.

(b) The term "employer" means any person, firm, partnership, limited liability company, corporation, association, trust or fiduciary of any kind or other type organization qualifying as an employer for federal income tax withholding purposes and who maintains an office, transacts business in or derives any income from sources within the state of Kansas for whom an individual performs or performed any services, of whatever nature, as the employee of such employer, and who has control of the payment of wages for such services, or is the officer, agent or employee of the person having control of the payment of wages. It also includes the United States, the state and all political subdivisions thereof, and all agencies or instrumentalities of any of them.

(c) The term "distributee" means any person or organization who receives a distribution which is subject to withholding of income tax pursuant to this act.

(d) The term "distribution" means a distribution from a corporation for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, from a limited liability company formed under the laws of the state of Kansas, or from a partnership.

(e) The term "nonresident" means an individual domiciled outside this State and an entity whose commercial domicile is outside of this State. For corporations, commercial domicile is defined in K.S.A. 79-3271, and amendments thereto.

(e) (f) The term "payee" means any person or organization who receives a payment other than wages, or a payment of a pension, annuity or deferred income, which is subject to withholding of income tax pursuant to this act.

(g) The term "payer" means any person or organization, other than an employer, who makes a payment other than wages, or a payment of a pension, annuity or deferred income, which is subject to withholding of income tax pursuant to this act.

(f) (h) The term "payment other than wages" means a payment that is subject to federal income tax withholding and taxable under the Kansas income tax act, and that is a payment:

- (1) for any supplemental unemployment compensation, annuity, or sick pay;
  - (2) pursuant to a voluntary withholding agreement;
  - (3) of gambling winnings;
  - (4) of taxable payments of Indian casino profits;
  - (5) for any vehicle fringe benefit;
  - (6) of periodic payments of pensions, annuities, and other deferred income;
  - (7) of nonperiodic distributions of pensions, annuities, and other deferred income; or
  - (8) of eligible rollover distributions of pensions, annuities, and other deferred income.
- (6) of a management fee paid in the ordinary course of a trade, business or other for profit

venture; or

From Jim Wezgenber

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Attachment 2

(7) of a consulting fee paid in the ordinary course of a trade, business or other for profit venture.

~~(g) The term "payor" means any person or organization, other than an employer, who makes payments, other than wages or distributions, which are subject to withholding of income tax pursuant to this act.~~

(i) The term "pension, annuity or other deferred income" means a payment that is taxable under the Kansas income tax act, and that is a payment:

(1) of periodic payments of pensions, annuities, and other deferred income;

(2) of nonperiodic distributions of pensions, annuities, and other deferred income; or

(3) of eligible rollover distributions of pensions, annuities, and other deferred income.

~~(h)-(j) The term "wages" means wages as defined by section 3401(a) of the federal internal revenue code which are taxable under the Kansas income tax act, and shall include any prize or award paid to a professional athlete at a sporting event held in this state.~~

Sec. 2. K.S.A. 79-3298 is hereby amended to read as follows: 79-3298. (a) Every employer ~~and payor~~ payer, person or organization deducting and withholding tax shall remit the taxes and file returns in accordance with the following provisions. (1) Whenever the total amount withheld exceeds \$100,000 in any calendar year, the employer ~~or payor~~ payer, person or organization deducting and withholding tax shall remit the taxes withheld in accordance with the following schedule: Each calendar month shall be divided into four remittance periods that end on the 7th, 15th, 21st and last day of such month. If at the end of any one or all of such remittance periods the total undeposited taxes equal or exceed \$667, the taxes shall be remitted within three banking days. Saturdays, Sundays and legal holidays shall not be treated as banking days. (2) Whenever the total amount withheld exceeds \$8,000 but does not exceed \$100,000 in any calendar year, the employer ~~or payor~~ payer, person or organization deducting and withholding tax shall remit the taxes withheld for wages paid during the first 15 days of any month on or before the 25th day of that month. The employer ~~or payor~~ payer, person or organization deducting and withholding tax shall remit the taxes withheld for wages paid during the remainder of that month on or before the 10th day of the following month. (3) Whenever the total amount withheld exceeds \$1,200 but does not exceed \$8,000 in any calendar year, the employer ~~or payor~~ payer, person or organization deducting and withholding tax shall remit the taxes withheld during any month on or before the 15th day of the following month. (4) Whenever the total amount withheld exceeds \$200 but does not exceed \$1,200 in any calendar year, the employer ~~or payor~~ payer, person or organization deducting and withholding tax shall remit the taxes withheld in any calendar quarter on or before the 25th day of the first month following the end of that calendar quarter. (5) Whenever the total amount withheld does not exceed \$200 in any calendar year, the employer shall remit the taxes withheld during that year on or before January 25 of the following year.

(b) Each remittance required under the provisions of subsection (a) shall be accompanied by a Kansas withholding tax remittance form prescribed and furnished by the director.

(c) Every employer ~~or payor~~ payer, person or organization deducting and withholding tax and making remittances pursuant to subsection (a) shall file a return on a form prescribed and furnished by the director for each calendar year on or before the last day of February of the following year.

(d) The excess of any remittance over the actual taxes withheld in any withholding period shall be credited against the liability for following withholding periods until exhausted. A refund shall be allowed in accordance with K.S.A. 79-32,105, and amendments thereto, where an

overpayment cannot be adjusted by an offset against the liability for a subsequent withholding period.

(e) ~~For purposes of determining filing requirements, determinations of amounts withheld during a calendar year by employers or payors payers, person or organization deducting and withholding tax for purposes of determining filing requirements shall be made by the director upon the basis of amounts withheld by those employers or payor payers, persons or organizations during the preceding calendar year or by estimates in cases of employers or payor payers, persons or organizations having no previous withholding histories. The director is hereby authorized to modify the filing schedule for any employer or payor payer, person or organization deducting and withholding tax when it is apparent that the original determination was inaccurate.~~

(f) Whenever the director has cause to believe that money withheld by an employer or payor payer, person or organization deducting and withholding tax pursuant to this act may be converted, diverted, lost, or otherwise not timely paid in accordance with this section, the director shall have the power to require returns and payment from any such employer or payor payer, person or organization at any time at more frequent intervals than prescribed by this section in order to secure full payment to the state of all amounts withheld by such employer or payor payer, person or organization in accordance with this act.

Sec. 3. K.S.A. 79-3299 is hereby amended to read as follows: 79-3299. (a) Every employer or payor payer, person or organization deducting and withholding tax shall, on or before January 31 of each year prepare a statement for each employee or payee on a form prescribed by the director stating the amount of wages or payments other than wages subject to Kansas income tax paid during the preceding year, the total amount of tax withheld, if any, from such wages or payments other than wages by the employer or payor payer, person or organization pursuant to this act and such other information as may be prescribed by the director. One copy of such statement shall be filed by the employer or payor payer, person or organization with the division of taxation on or before the last day of February of each year. Two copies of such statement shall be given to the employee or payee concerned, one of which will be filed by the employee or payee with the tax return required by this chapter.

(b) In the case of an employee whose employment is terminated before the end of a calendar year, the statement required by subsection (a) may be mailed at the time provided in that subsection to the last known address of the employee, or issued at the time of the last payment to the employee, at the employer's option.

(c) Any employer or payor payer, person or organization deducting and withholding tax who willfully fails to furnish a statement to an employee or payee as required under the provisions of subsections (a) and (b) of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$100 for each such offense.

(d) The annual statement of wages and salaries paid and amount withheld required by this section shall be in lieu of the annual information return required under K.S.A. 79-3222.

Sec. 4. K.S.A. 79-32,100 is hereby amended to read as follows: 79-32,100. (a) The tax deducted and withheld under this act shall not be allowed as a deduction either to the employer or payor payer, person or organization deducting and withholding tax or to the employee or payee in computing taxable income under the "Kansas income tax act".

(b) The full amount of wages and salaries or payments other than wages from which an amount was withheld in accordance with this act shall be included in the gross income of the

employee or payee unless such wages and salaries or payments other than wages or a portion thereof are otherwise excludable under the provisions of the "Kansas income tax act".

(c) The amount deducted and withheld under this act during any calendar year from the wages or payments other than wages of an individual taxpayer shall be allowed as a credit against the income tax otherwise imposed on such taxpayer by the "Kansas income tax act," whether or not such amount was remitted to the division of taxation by the employer ~~or payor payer, person or organization deducting and withholding tax~~ in accordance with the terms of this act.

(d) If the amount withheld under this act during any calendar year exceeds the individual income tax liability of the employee-payee-taxpayer any excess shall be applied to any other income tax owed the state of Kansas by such individual (including fines, penalties and interest, if any) and the balance of such excess, if any, refunded to the taxpayer as provided in subsection (c) of K.S.A. 79-32,105, and amendments thereto.

Sec. 5. K.S.A. 79-32,100a is hereby amended to read as follows: 79-32,100a. (a) ~~Every payor payer~~ who is required under federal law to withhold upon payments other than wages as defined by K.S.A. 79-3295, and amendments thereto, pursuant to the federal internal revenue code shall withhold and deduct ~~deduct and withhold~~ an amount to be determined in accordance with K.S.A. 79-32,100d, and amendments thereto, ~~whenever the payee is a person whose primary residence is in Kansas.~~

(b) A determination by the internal revenue service that relieves a ~~payor payer~~ from withholding responsibility with respect to payments other than wages to a payee shall also apply for Kansas income tax withholding purposes. Whenever a ~~payor payer~~ is required to reinstate withholding for federal income tax with regard to any payee, such obligation shall be equally applicable for Kansas withholding purposes.

~~(c) Every payor who makes a distribution as defined by subsection (d) of K.S.A. 79-3295, and amendments thereto, shall withhold and deduct an amount to be determined in accordance with K.S.A. 79-32,100d, and amendments thereto, from amounts distributed or distributable to each nonresident shareholder or partner.~~

(c) Every payer who is required under federal law to withhold upon payments of a pension, annuity, or other deferred income, as defined by K.S.A. 79-3295, and amendments thereto, shall deduct and withhold an amount to be determined in accordance with K.S.A. 79-32,100d, and amendments thereto, whenever the payee is a resident of the state of Kansas.

(d) Every payer who makes a payment of a management fee or a consulting fee to a nonresident shall deduct and withhold an amount to be determined in accordance with K.S.A. 2002 Supp. 79-32,100d, and amendments thereto.

New Sec. 6. (a) Corporations for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect are required to deduct and withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from a nonresident shareholder's share of Kansas taxable income of the corporation, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the corporation shall make a return and pay over the withheld funds on or before the due date of the S corporation's income tax return, including extensions. Taxes withheld in the name of the



nonresident shareholder must be used as credit against taxes due at the time the nonresident files a return of income or other applicable information return for the taxable year.

(b) An S corporation required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The S corporation shall furnish to each nonresident shareholder a written statement as required by K.S.A. 79-3299, and amendments thereto as proof of the amount of his or her share of distributed or undistributed income and of the amount that has been withheld.

(c) Partnerships are required to withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from a nonresident partner's share of Kansas taxable income of the partnership, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the partnership shall make a return and pay over the withheld funds on or before the due date of the partnership's income tax return, including extensions. Taxes withheld in the name of the nonresident partner must be used as credit against taxes due at the time the nonresident files a return of tax or other applicable information return for the taxable year.

(d) A partnership required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The partnership shall furnish to each nonresident shareholder a written statement as required by K.S.A. 79-3299, and amendments thereto, as proof of the amount of his or her share of distributed or undistributed income that has been withheld.

(e) Limited liability companies are required to withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from a nonresident member's share of Kansas taxable income of the limited liability company, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the limited liability company shall make a return and pay over the withheld funds on or before the due date of the limited liabilities income tax return, including extensions. Taxes withheld in the name of the nonresident member must be used as credit against taxes due at the time the nonresident files a return of tax or other applicable information return for the taxable year.

(f) A limited liability company required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The limited liability company shall furnish to each nonresident member a written statement as required by K.S.A. 79-3299, and amendments thereto, as proof of the amount of his or her share of distributed or undistributed income that has been withheld.

(g) If a nonresident shareholder, partner or member provides the S corporation, partnership or limited liability company with a statement that the shareholder or partner is an organization exempt from income taxes under Section 501(a) of the internal revenue code, then the S corporation, partnership or limited liability company is not required to withhold with regard to that shareholder, partner or member. The statement must contain the shareholder's, partner's or members name, federal identification number, Internal Revenue Code section exemption number, and a copy of the Internal Revenue Service exemption letter.

(h)(1) For purposes of computing the penalty under K.S.A. 79-32,107, and amendments thereto, the amount withheld is deemed a payment of estimated tax, and an equal part of the amount is deemed paid on each estimated tax due date for the previous taxable year.

(2) If a nonresident shareholder, partner or member files an affidavit with the department in a form acceptable to the department by which he or she agrees that he or she is subject to the personal jurisdiction of the department and courts of this State for the purpose of determining and collecting any Kansas taxes, including estimated taxes, together with any related interest and penalties, then the S corporation, partnership or limited liability company is not required to withhold with regard to that shareholder, partner or member. The department may revoke an exemption granted by this subsection at any time it determines that the nonresident shareholder, partner, or member is not abiding by its terms.

(i) The department is authorized to require such returns and other information as it considers appropriate to administer the provisions of this section, and to issue rulings and promulgate regulations as necessary or appropriate to implement this section.

(j) The director of taxation may allow a nonresident individual shareholder, partner or member to not file a Kansas income tax return if the nonresident individual shareholder's, partner's or member's only source of Kansas income was his or her share of the S corporation's, partnership's or limited liability company's income which was derived from or attributable to sources within this state, and the S corporation, partnership or limited liability company has remitted the amount required by subsections (a), (c) or (e) on behalf of such nonresident shareholder, partner or member. The amount remitted shall be retained in satisfaction of the Kansas income tax liability of the nonresident individual shareholder, partner or member.

Sec. 7. K.S.A. 79-32,100b is hereby amended to read as follows: 79-32,100b. (a) Every employer ~~or payor~~ payer, person or organization required to deduct and withhold tax from wages of an employee, ~~or payments other than wages of a payee, or from a distribution,~~ under this act shall be liable for the payment of such tax whether or not it is collected from the employee ~~or payee, or distributee~~ by the employer ~~or payor~~ payer, person or organization. For purposes of assessment and collection, any amount required to be withheld and paid over to the department of revenue, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer.

(b) Any amount of tax withheld shall constitute a special fund in trust for the department of revenue.

(c) No employee ~~or payee or distributee~~ shall have any right of action against their employer ~~or payor~~ payer, person or organization deducting and withholding tax in respect to any monies deducted and withheld from wages ~~or payments other than wages, or distributions~~ and paid over to the department of revenue in compliance or in intended compliance with this act.

Sec. ~~13~~ 8. K.S.A. 79-32,100c is hereby amended to read as follows: 79-32,100c. (a) If an employer ~~or payor~~ payer, person or organization deducting and withholding tax fails to deduct and withhold the tax as required under this act, and thereafter, the income tax against which the tax may be credited it paid, the tax required to be deducted and withheld shall not be collected from the employer ~~or payor~~ payer, person or organization. The payment of such tax does not, however, operate to relieve the employer, payer, person or organization from liability for penalties, interest or additions to the tax applicable with respect to such failure to deduct and withhold. The employer ~~or payor~~ payer, person or organization will not be relieved under this

provision from liability for payment of the tax required to be withheld unless it can be shown that the income tax against which the tax required to be withheld under this act may be credited has been paid.

(b) Every agent or other person having control, receipt, custody or disposal of, or paying the wages of an employee or group of employees employed by one or more employers, is for the purpose of this act designated to be an employer. In the case of the corporation, the officers and board of directors are likewise considered employers. Employers of classes named in this section shall be subject to all the provisions of law including penalties as is their principal. Any employer, who willfully fails to collect the tax imposed by the Kansas withholding tax act or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any tax or the payment thereof, shall be subject to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over in addition to other penalties provided by law.

Sec. ~~14~~ (9). The provisions of this act shall be part of and supplemental to the Kansas withholding and declaration of estimated tax act, K.S.A. 79-3294 *et seq.* and amendments thereto.

Sec. ~~15~~ (10). K.S.A. 79-3295, 79-3298, 79-3299, 79-32,100, 79-32,100a, 79-32,100b and 79-32,100c are hereby repealed.

Sec. ~~16~~ (11). This act shall take effect and be in force from and after its publication in the statute book.