

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairman Edmonds at 9:00 a.m. on April 2, 2002 in Room 519-S of the Capitol.

All members were present except: Representative Mays, excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor
Winnie Crapson, Secretary

Conferrees appearing before the Committee: Senator Jenkins
Representative Larkin
Chuck Stones, Kansas Bankers Association
Jack Ovel, Commerce Trust Company, Kansas City
Ace Rowley, Private Bank of Bank of America

Others Attending: See attached list.

Hearing was opened on

SB 575 - Income tax withholding required upon certain income distributions and prize money.

Representative Jenkins presented testimony in support of **SB 575** (Attachment #1), testifying that this provision would give the Department of Revenue authority to require Kansas income tax withholding on nonresident individual partners of S corporation shareholders and professional athletes. Under current law nonresident partners, shareholders, and athletes are already required to pay Kansas tax on Kansas source income. This proposal helps ensure that Kansas does collect the tax and may accelerate the receipt of payments.

Charles Stones presented testimony in support of **SB 575** on behalf of the Kansas Bankers Association (Attachment #2). Mr. Stones testified that the language in Section 2 would clarify when taxes are required to be withheld at the state level for those payers other than an employer.

Hearing was closed on SB 575.

Hearing was opened on

HB 3030 - Resident trust definition for income tax purposes.

Jack Ovel, Executive Vice President, presented testimony on behalf of Commerce Trust Company in opposition to **HB 3030** (Attachment #3). He commented on three general issues: (1) the most important concern is the costly administrative burden and enforcement challenges it would create; (2) it would likely create very little additional revenue; and (3) this change would have an unintended consequence of affecting the Kansas economy adversely if an individual who wishes to preserve his trusts from the potential of paying Kansas tax on gains and accumulations might move out of Kansas.

In response to questions, Mr. Ovel said you could avoid paying Kansas income tax if the trust is administered by a Missouri bank and that is an incentive to have trusts in Missouri banks.

Testimony in opposition to **HB 3030** was presented by Ace Rowley, Senior Vice President, Bank of America (Attachment #4). He believes the present statute embodies a practical taxing policy and the proposed amendment will thrust Kansas into an existing controversy, referring to litigation in the Missouri Supreme Court. He mentioned unintended consequences that were of concern.

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In response to questions he said in *Swift*, the first Missouri case, it was found unconstitutional (*John C. Swift, et al v. Director of Revenue, State of Missouri*, 727 S.W.2d 880, Supreme Court of Missouri 1987). In *Westfall*, the second case, it was found to be constitutional (*Westfall v. Director of Revenue, State of Missouri*, 812 S.W.2d 513, Supreme Court of Missouri 1991).

The Committee recessed at 9:30 a.m. and reconvened at 12:00 noon

Representative Larkin presented testimony in support of **HB 3030** (Attachment #5). He explained that the bill attempts to close a loophole or tax avoidance discovered a number of years ago. This proposal has passed the house in prior years at least once. A trust administered by out-of-state bank is not subject to state income tax. Representative Larkin's testimony included a letter from the General Counsel of the Department of Revenue dated March 14, 1994 explaining that the existing definition of resident trust allows certain trust income to avoid taxation by the State of Kansas. At present a trust administered in Missouri or any other state can legally avoid paying the Kansas tax.

Richard Cram, Department of Revenue, provided for the Committee a copy of the Missouri Statute and of the *Swift* and *Westfall* decisions. He also provided information on two other cases involving resident trusts: *District of Columbia v. Chase Manhattan Bank*, 689 A.2d 539 (1997); and *Chase Manhattan Bank, Trustee, et al. v. Gene Gavin, Commissioner of Revenue Services*, 249 Conn. 172, 733 A2d 782, Supreme Court of Connecticut 1999.

Hearing was closed on **HB 3030**.

Consideration was opened on **HB 2396** - Property tax valuation increases limited.

Chairman Edmonds noted the Committee held hearing March 19, 2001 on **HB 2396**. On March 23, 2002 it was amended and reported favorable for passage as amended. It was rereferred March 29, 2001.

Representative Palmer moved, Representative L. Powell seconded, that HB 2396 be amended by returning it to the form it was reported by the Committee. Motion was adopted.

Representative L. Powell moved, Representative T. Powell seconded, that HB 2396 be reported favorable for passage as amended. Motion was adopted.

Meeting adjourned at 12:15 p.m. Next meeting is April 3.