

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS

The meeting was called to order by Senator Paul Hess at
Chairperson

11:00 a.m./p.m. on January 11, 1983 in room 123-S of the Capitol.

All members were present except:
Senator Doyen

Committee staff present:

Research Department: Richard Ryan, Marlin Rein, Sherry Brown, Mary Galligan, Julian Efird,
Wayne Morris, Tom Severn

Revisor's Office: Norman Furse, Don Hayward

Conferees appearing before the committee:

Lynn Muchmore, State Budget Director

Michael Lennen, Secretary of Revenue

Senator Hess distributed subcommittee assignments for appropriations bills originating in the Senate. He then called the committee's attention to the need for two proposals requested by the Governor regarding speedup collection of Withholding and Sales taxes from employers and retailers, respectively.

Motion was made by Senator Talkington and seconded by Senator Steineger to introduce the above mentioned measures as committee bills. The motion carried by voice vote.

The Chairman called on Mr. Muchmore, who deferred to Secretary Lennen to present the Governor's bill concerning speedup collection of withholding tax. Mr. Muchmore noted that this bill is an extremely important part of the Governor's economic package.

Mr. Lennen distributed his prepared statement (See Attachment A) and copies of the proposal regarding withholding taxes (3 RS 0175). During his presentation there were questions concerning the additional costs involved. Mr. Lennen explained that there will be significant startup costs in data processing, and there would be more remittances than at the present time. In addition, there will be delinquency control. Responding to further questions, Mr. Lennen indicated there is no sunset provision in the proposal.

Committee members questioned Mr. Lennen extensively concerning the penalty provisions of the withholding tax proposal.

Following Mr. Lennen's presentation, the Chairman asked if there were proponents or opponents of the withholding tax measure. There were none present.

Five bills had been referred to the committee on this date, and the Chairman asked for a brief resume of each, as follows: Senator Bogina reviewed SB 22; Mr. Rein reviewed SB 19, SB 18, SB 17 and SB 12. Hearings will be held on these measures at a later date.

The meeting was adjourned by the Chairman.

MR. CHAIRMAN:

January 11, 1983

MEMBERS OF THE COMMITTEE:

Thank you for the opportunity of testifying this morning regarding the proposed accelerated collections plan. By way of preliminary comment I would note that the plan is embodied in two bills -- one relating to withholding tax remittances and the other to sales and use tax remittances.

The underlying premises relied upon in developing the proposal were: first, to the extent possible we should retain the framework of the present remittance system; and, second, while maximizing collections we should limit the number of businesses affected and minimize additional recordkeeping and processing requirements for taxpaying businesses as well as for the state.

The proposal calls for an adjustment of filing dates, and in certain instances, for an increase in the frequency of the submission of remittances to the state.

I should indicate to the committee that in preparing the bills we have consulted with representatives of taxpaying businesses and business organizations. Our aim, of course, has been to develop a workable and reasonable product for your consideration -- one that meets the state's fiscal needs without imposing an onerous or unnecessary burden on Kansas businesses. The advice and recommendations emanating from the Kansas business community have been most helpful.

It is estimated that implementation of the total package would result in an increase in Fiscal Year 1983 collections of \$112 million. Of that amount, \$80.6 million is attributable to the proposed withholding tax changes. The additional administrative cost for implementing the changes is \$155,000 in Fiscal Year 1983 and \$320,000 in Fiscal Year 1984.

A 1-11-83

Withholding Tax Remittance Policy

Current law requires quarterly filing of most withholding returns and remittances. The returns and payments are to be filed within 30 days from the end of the quarter. Accounts having an annual liability of \$200 or less may be filed annually.

With the exception of State sales tax collections, withholding tax collections are the Department's largest single source of receipts and totaled \$412 million in calendar year 1982. After paying refunds, deposits to the general fund were \$364 million.

The federal government requires most employers to file on a more frequent basis than is currently provided under Kansas law.

FOR WITHHOLDING OF

- | | |
|------------------------|---------------------------------------|
| a. Quarterly | \$6,000 per year |
| b. Monthly | Between \$6,000 and \$36,000 per year |
| c. Eight times a month | Over \$36,000 per year |

Other states have most accounts deposit on a more frequent basis than does Kansas. Massachusetts, for example, has had large accounts deposit four times a month since 1976, and Minnesota has large accounts deposit eight times a month.

<u>State</u>	<u>Withholding Tax Liability</u>	<u>Tax Period</u>	<u>Return Due</u>
Kansas	\$0-\$200/yr.	Annually	Last day of following month
	\$201/yr. and above	Quarterly	Last day of following month
Nebraska	None	Annually	--
	\$0-499/mo.	Quarterly	Last day of following month
	\$500/mo. and above	Monthly	15th of following month
Oklahoma	None	Annually	--
	\$0-299/mo.	Quarterly	Last day of following month
	\$300/mo. and above	Monthly	Last day of following month
Missouri	\$0-\$19/qtr.	Annually	Last day of following month
	\$20/qtr.-\$1,499/wk.	Monthly	20th day of month
	\$1,500/wk. and above	Weekly*	Within 3 banking days
Colorado**	\$0-33/mo.	Annually	Last day of following month
	\$34-\$399/mo.	Quarterly	Last day of following month
	\$400/mo. and above	Monthly	15th of following month
Iowa	None	Annually	--
	\$0-\$49/mo.	Quarterly	Last day of following month
	\$50-\$15,999/mo.	Monthly	15th of following month
	\$16,000 and above	Semimonthly	First 15 days by the 25th; re- mainder within 10 days following close of the month.

*Four "quarter-month" periods: First 7 days, next 8, next 7, remainder.
 **Effective January 1, 1983.

Section 1 of the bill would change the remittance requirement from quarterly to semi-monthly for employers withholding more than \$8,000 per year and to monthly for those withholding between \$1,200 and \$8,000 per year. Employers withholding between \$200 and \$1,200 would continue on a quarterly remittance schedule and employers withholding \$200 or less would remit annually. First half semi-monthly remittances would be due on the 25th of the month; second half on the 10th of the following month. Monthly, quarterly and yearly remittances would be due on the 15th of the month following the close of the month, quarter or year.

The number of employers falling within each category and the percentage of liability represented by each category is set forth below:

<u>FILING BRACKET</u>		<u>NO. OF ACCOUNTS</u>	<u>FILING</u>		<u>% OF TOTAL LIABILITY</u>
<u>MONTHLY</u>	<u>ANNUAL</u>		<u>FREQUENCY</u>	<u>DATES</u>	
\$ 0-\$16	\$0-\$200	11,000	Annual	15th	0.16%
17-\$100	201-1200	20,400	Quarterly	15th	1.65
101-666	1201-8,000	21,200	Monthly	15th	12.39
667-over	8,001-over	<u>7,400</u>	Semi-	25th &	<u>85.80</u>
			Monthly	10th	
		60,000			100.00%

One particularly significant feature of the proposal is that the quarterly return filing requirement would be replaced by an annual filing requirement due on or before January 15 of the following year.

The director of taxation is made responsible for establishing particular employers' filing requirements based on the past year's liabilities or estimates.

Subsection (f) of section 2 imposes a penalty of 25% on the amount of any underpayment for failure to remit any amount of withholding tax liability at the time required in section 1 unless such failure is due to reasonable cause and not willful neglect. Any such failure to remit is deemed not to continue beyond the time the annual return is due, and penalty and interest begin to accrue pursuant to the present provisions of the income tax law from the return due date.

SENATE BILL NO. _____

AN ACT amending the Kansas withholding and declaration of estimated tax act; amending K.S.A. 1982 Supp. 79-3298 and 79-32,107 and repealing the existing sections.

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

Section 1. K.S.A. 1982 Supp. 79-3298 is hereby amended to read as follows: 79-3298. (a) With respect to any taxes withheld before April 1, 1983, every employer, under this act other than employers who have received the prior approval of the director to file an annual return, shall file a withholding return on or before the last day of the first month following the end of the calendar quarter in which withholding was required. Whenever the total amounts withheld by an employer do not exceed the sum of \$200 in any calendar year, such employer, upon the prior approval of the director of taxation and upon such conditions as the director may prescribe, may file an annual return on or before January 31 in lieu of filing quarterly returns. Such return shall be on a form prescribed by the director of taxation and shall be accompanied by payment in full of any amounts withheld by the employer. Employers who have received the approval of the director to file an annual return before the effective date of this act shall comply with the applicable provisions of subsection (b).

(b) With respect to any taxes withheld after March 31, 1983, every employer shall remit the taxes and file returns in accordance with the following provisions. Whenever the total amount withheld exceeds \$8,000 in any calendar year, the employer shall remit the taxes withheld during the first 15 days of any month on or before the 25th day of that month. The employer shall remit the taxes withheld during the remainder of that month

on or before the 10th day of the following month, except that taxes withheld for that portion of the month of December shall be due and shall be remitted at the same time the annual return is required to be filed. Whenever the total amount withheld exceeds \$1,200 but does not exceed \$8,000 in any calendar year, the employer shall remit the taxes withheld during any month on or before the 15th day of the following month. Whenever the total amount withheld exceeds \$200 but does not exceed \$1,200 in any calendar year, the employer shall remit the taxes withheld in any calendar quarter on or before the 15th day of the first month following the end of that calendar quarter. 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 15 of the following year.

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

(d) Every employer making remittances pursuant to subsection (b) shall file a return on a form prescribed and furnished by the director for each calendar year on or before January 15 of the following year.

(e) 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.

(f) Determinations of amounts withheld during a calendar year by employers for purposes of determining filing requirements shall be made by the director upon the basis of amounts withheld by those employers during the preceding calendar year or by estimates in cases of employers having no previous withholding histories. The director is hereby authorized to modify the filing schedule for any employer when it is apparent that the original determination was inaccurate.

(g) Whenever the director has cause to believe that money withheld by an employer 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 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 in accordance with this act.

Sec. 2. K.S.A. 1982 Supp. 79-32,107 is hereby amended to read as follows: 79-32,107. (a) All penalties and interest prescribed by K.S.A. ~~1982-Supp. 79-3228~~, and amendments thereto, for noncompliance with the income tax laws of Kansas shall be applicable for noncompliance with the provisions of the Kansas withholding and declaration of estimated tax act relating to withholding tax which shall be enforced in the same manner as the "Kansas income tax act." A penalty at the same rate per annum prescribed by subsection (b) of K.S.A. 1982 Supp. 79-2968(b) ~~79-2968, and amendments thereto~~, for interest upon delinquent or unpaid taxes shall be applied and added to a taxpayer's amount of underpayment of estimated tax due from the date the estimated tax payment was due until the same is paid or until the 15th day of the fourth month following the close of the taxable year for which such estimated tax is a credit, whichever date is earlier, but such penalty shall not be added if the total amount thereof does not exceed \$1. For purposes of this subsection, the amount of underpayment of estimated tax shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 80% of the tax shown on the return for the taxable year or, if no return was filed, 80% of the tax for such year, over the amount, if any, of the installment paid on or before the last date prescribed for payment. Amounts due from any employer on account of withholding or from any individual for estimated tax may be collected by the director in the manner provided for the collection of state income tax in K.S.A. 79-3235.

(b) No penalty or interest shall be imposed upon any individual with respect to any underpayment of any installment if the total amount of all payments of estimated tax made on or

before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year and such preceding year was a taxable year of 12 months;

(2) an amount equal to 66 2/3%, in the case of individuals referred to in K.S.A. 79-32,102(b), and amendments thereto, and 80%, in the case of all other individuals, of the tax for the taxable year computed by placing on an annualized basis, pursuant to rules and regulations adopted by the secretary of revenue, the taxable income for the months in the taxable year ending before the month in which the installment is required to be made;

(3) an amount equal to 90% of the tax computed, at the rates applicable to the taxable year, on the basis of the actual taxable income for the months in the taxable year ending before the month in which the installment is required to be paid as if such months constituted the taxable year; or

(4) an amount equal to the tax computed, at the rates applicable to the taxable year, on the basis of the taxpayer's status with respect to personal exemptions under K.S.A. ~~1982~~ Supp. 79-32,121, and amendments thereto, for the taxable year, but otherwise on the basis of the facts shown on the return for, and the law applicable to, the preceding taxable year.

(c) No penalty or interest shall be imposed upon any corporation with respect to any underpayment of any installment of estimated tax if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is lesser:

(1) The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax

was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of 12 months;

(2) an amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; or

(3) (A) an amount equal to 80% of the tax for the taxable year computed by placing on an annualized basis the taxable income: (i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month; (ii) for the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month; (iii) for the first six months or for the first eight months of the taxable year in the case of the installment required to be paid in the ninth month; and (iv) for the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this subsection (3), the taxable income shall be placed on an annualized basis by (i) multiplying by 12 the taxable income referred to in subsection (3)(A), and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or 11, as the case may be) referred to in subsection (3)(A).

(d) If the employer, in violation of the provisions of this act, fails to deduct and withhold under this chapter, and thereafter the tax against which such withholding may be credited is paid, the amount otherwise required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Any person required to collect, truthfully account for, and pay over any tax imposed by this act, who willfully fails to collect such tax, or truthfully account for and pay over such

tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to the other penalties of this section be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

(f) In case of failure by any employer required by subsection (b) of K.S.A. 79-3298, and amendments thereto, to remit any amount of withheld taxes by the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 25% of the amount of the underpayment. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be withheld and remitted over the amount, if any, remitted on or before the date prescribed therefor. The failure to remit for any withholding period shall be deemed not to continue beyond the last date prescribed for filing the annual return as required by subsection (d) of K.S.A. 79-3298, and amendments thereto. Penalty and interest as prescribed by K.S.A. 79-3228, and amendments thereto, shall not begin to accrue under subsection (a) of this section on the amount of any such underpayment until the due date of the annual return for the calendar year in which such failure to remit occurs.

Sec. 3. K.S.A. 1982 Supp. 79-3298 and 79-32,107 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.