

Approved: _____

1/26/93

Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairperson Keith Roe at 9:10 a.m. on January 19, 1993 in Room 519-S of the Capitol.

All members were present except:

Representative Crowell (excused)
Representative Pottorff (excused)

Committee Staff Present:

Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes
Bill Edds, Revisor of Statutes
Lenore Olson, Committee Secretary

Conferees appearing before the Committee:

Mark Burghart, General Counsel, Kansas Department of Revenue
Chris McKenzie, League of Kansas Municipalities

Others attending: see attached list.

Chairperson Roe opened the hearing on HB 2004.

HB 2004: Countywide and city retailer's sales taxes; concerning the levy thereof for purposes of funding health care services.

Mark Burghart, General Counsel, Department of Revenue, testified in support of HB 2004 and explained that this bill is a recommendation of the 1992 Special Committee on Assessment and Taxation and is in direct response to Attorney General Opinion No. 92-96. Mr. Burghart said that this bill is necessary to correct some unintended consequences of legislation passed during the 1992 Session, and that cities were never intended to be able to charter out from the local sales tax provisions (Attachment 1). Mr. Burghart distributed copies of a letter sent by the Department of Revenue to one of the six cities which adopted charter ordinances which exempt original construction services from the local retailer's sales tax (Attachment 2).

Chris McKenzie, League of Kansas Municipalities, testified that he generally supports the provisions of HB 2004, but would like to see the bill amended to eliminate the health care limitation of the bill and current law. He said that if property taxes are going to be further reduced and stabilized across the state, additional local sales tax authority, subject to voter approval, is desirable (Attachment 3).

Written testimony in support of HB 2004 was submitted by Sheryl Sanders, Kansas Mental Health Coalition (Attachment 4).

Chairperson Roe closed the hearing on HB 2004.

The meeting adjourned at 9:34 a.m. The next meeting is scheduled for Wednesday, January 20, at 9:00 a.m. in 519-S.

Date: 1/19/93

GUEST REGISTER

HOUSE COMMITTEE ON
ASSESSMENT AND TAXATION

[illegible]

STATE OF KANSAS

Mark A. Burghart, General Counsel
Robert B. Docking State Office Building
915 S.W. Harrison St.
Topeka, Kansas 66612-1588



(913) 296-2381
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Department of Revenue
Legal Services Bureau

MEMORANDUM

To: The Honorable Keith Roe, Chairman
House Committee on Taxation

From: Mark A. Burghart, General Counsel
Kansas Department of Revenue

Date: January 19, 1993

RE: 1993 H.B. 2004

Thank you for the opportunity to appear in support of H.B. 2004. The bill is a recommendation of the 1992 Special Committee on Assessment and Taxation and is in direct response to Attorney General Opinion No. 92-96. That opinion concluded that a city may, pursuant to its home rule powers, exempt original construction services from application of the local sales tax. The Attorney General determined that the enactment of new sales tax authority for health care purposes during the 1992 Session rendered the local sales tax act nonuniform thus enabling cities to charter out from the local sales tax provisions. H.B. 2004 is intended to reestablish uniformity in the local sales tax statutes and thus limit the ability of cities to charter out from these tax provisions.

The Attorney General opinion raised a number of issues which were considered by the Special Committee. Those issues are summarized below:

1. Although the opinion only addressed original construction services, the rationale would subject all provisions of the local retailer's sales tax to cities' powers of home rule. It would appear that a city by charter ordinance could create new exemptions or eliminate any exemptions currently provided in the state statutory sales tax base. Cities could also charter out from provisions prescribing rates and providing for elections.
2. There is no limitation on the number of times that a city could modify its sales tax base during the year. A constantly changing tax base would result in a situation where a retailer would never be entirely certain that the

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Attachment 1

appropriate amount of tax was being collected on any given transaction. Currently, 129 cities impose a local option tax.

3. A variable tax base in cities would further complicate record keeping requirements for retailers. The audit function performed by the Department also would place additional demands on retailers to verify exempt sales.
4. Retailers would be burdened by the use of varying tax bases. The existing system is cumbersome when identifying the situs of a particular sales transaction for determining the proper local tax rate. These problems would be exacerbated because now retailers would, in addition to keeping track of local rates, also be required to monitor changing tax bases among the cities.
5. The Department would be required to notify all retailers every time a city decided to modify its tax base. This is currently done when a rate change occurs. Retailers would be uncertain whether they have the most current information from the Department. This problem already exists when tax rates are changed by cities.
6. The discussion on tax competition has historically centered on that existing between the states. That focus will now shift from interstate competition to intrastate competition. City commissions rather than legislative committees will now determine tax policy. The erosion of the local tax base for "economic development" reasons is a concern which must be addressed.
7. School finance conferees specifically intended for the local sales tax base to expand along with the state base (3 conferees were members of the 1992 Special Committee on Assessment and Taxation as was the current Secretary of Revenue).

Six cities have adopted charter ordinances which exempt original construction services from the local retailer's sales tax. The Department of Revenue has advised these cities that it will not implement these ordinances. No statutory authority exists that would allow the Department to implement charter ordinances of this nature. While cities may determine their local affairs under the constitutional home rule provision (Article 12, Section 5), they may not create additional duties for a state agency which are not specifically authorized by statute. This is particularly true when the costs associated with these additional duties have not been budgeted by the Department.

I urge the House Committee to favorably consider H.B. 2004. The bill is necessary to correct some unintended consequences of legislation passed during the 1992 Session. Cities were never intended to be able to charter out from the local sales tax provisions.

December 21, 1992

Mary Sue Fry
Assistant City Clerk
City of Lenexa
12350 West 87th St. Parkway
P. O. Box 14888
Lenexa, Kansas 66215-0888

*Distributed by
M. Burghart*

Re: Charter Ordinance Regarding
Tax Exemption for Original
Construction Services

Dear Ms. Fry:

I have discussed the charter ordinance submitted by the City of Lenexa with the Secretary of Revenue and the General Counsel to determine whether the Department of Revenue has the necessary authority to implement the ordinance. The charter ordinance exempts original construction labor services from application of the Lenexa local retailers' sales tax. The ordinance was adopted after the Attorney General issued Opinion No. 92-96. That opinion concluded that a city may, pursuant to home rule authority, exempt original construction services from application of the local retailers' sales tax. We are unable to identify any statutory authority that would either allow the Department to implement a charter ordinance of this nature or establish procedural guidelines for its implementation.

Implementation of the charter ordinance would create additional administrative duties and responsibilities for the Department of Revenue. Some of these additional tasks include:

1. The Department would be required to notify all retailers (including contractors performing services in the City of Lenexa) of the different tax base in the City of Lenexa.
2. The sales tax returns and schedules must be revised to reflect the different tax base in the City of Lenexa.
3. The accounts receivable editing process would be required to be redesigned to account for the different tax base in the City of Lenexa to insure the proper distribution of local sales tax revenue.
4. Software used by the Department's sales tax auditors would be required to be revised to reflect the different tax bases among local units.
5. Audit reports prepared by the Department would need to be modified to reflect the additional details associated with variable local tax bases.

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Attachment 2

6. Additional audit time would be required to be devoted to field audits to determine the tax status of construction projects for local sales tax purposes.
7. Department resources would be diverted to educate retailers and contractors and answer inquiries concerning variations in the local tax bases.

It is clear these additional duties and responsibilities will cause the Department to incur additional costs to administer the local retailers' sales tax act on behalf of the City of Lenexa. None of these costs have been budgeted by the Department.

Article 12, Section 5(b) of the Kansas Constitution grants certain authority to cities to determine their local affairs. It provides:

"Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class..."
(Emphasis added.)

While it is clear that cities may determine their local affairs, it is our opinion that they may not create additional duties for a state agency which are not specifically authorized by statute. It is widely accepted that state agencies are creatures of the state legislature and cities, even in the exercise of their extensive home rule powers, lack authority to impose administrative duties on state agencies, as such is not a matter of local concern within the meaning of Article 12, Section 5. See Attorney General Opinion No. 82-17, p.3.

K.S.A. 12-189, as amended by L. 1992, Ch. 198, §6 and Ch. 251, §2 provides in part:

"Any county or city levying a retailers' sales tax is hereby prohibited from administering or collecting such tax locally, but shall utilize the services of the state department of revenue to administer, enforce and collect such tax. Except as otherwise specifically provided in 12-189a, and amendments thereto, such tax shall be identical in its application, and exemptions therefrom, to the Kansas retailers' sales tax act and all laws and administrative rules and regulations of the state department of revenue relating to the Kansas retailers' sales tax shall apply to such local sales tax insofar as such laws and rules and regulations may be made applicable..." (Emphasis added.)

The Attorney General has previously opined that these statutory provisions constitute a legislative recognition of the obvious economy and efficiency which result from state collection of local sales taxes, thus avoiding the necessity of costly collection efforts by cities which merely duplicate the established efficient and effective resources already available in the Kansas Department of Revenue. However, the Attorney General also clearly states that "[T]he Secretary of Revenue has no responsibility, however, to collect retailers' sales taxes unless

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December 21, 1992
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such tax is . . . identical in its application and exemption therefrom to the Kansas retailers' sales tax act." See Attorney General Opinion. No. 76-287, p.7.

The 1992 Special Committee on Assessment and Taxation reviewed Attorney General Opinion No. 92-96. It was the Committee's finding that cities were never intended to have the ability to charter out of the statutory provisions establishing a uniform tax base for local sales tax purposes. The Committee then voted to introduce a bill to reestablish uniformity in the local sales tax statutes. Since there was never any legislative intent to allow cities to establish non-uniform tax bases, no statutory authority has ever been granted to the Department to implement charter ordinances establishing such non-uniform bases.

In conclusion, since the Department is without statutory authority to implement a charter ordinance such as you have submitted and is not required to collect a local tax which is not identical in its application to the state sales tax, the Department will take no action to notify retailers of the proposed exemption of original construction labor services by the City of Lenexa. Legislative authorization will be required before the Department will undertake the additional duties associated with implementing charter ordinances of this nature. Any questions regarding the legal basis for the Department's position should be directed to the Department's General Counsel, Mark A. Burghart, at 913 296-2381.

Sincerely,



Mark Ciardullo, Chief
Business Tax Bureau

cc: Johnson County Legislative Delegation
Special Committee on Assessment and Taxation

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**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

Memorandum

TO: House Taxation Committee

FROM: *Chris* Chris McKenzie, Executive Director

DATE: January 19, 1993

RE: HB 2004--Uniformity of State and Local Sales Taxes

I appear today in general support of the provisions of HB 200⁴ which would address the nonuniformity of the local sales tax found by Attorney General Stephan in Opinion 92-96. While the League of Kansas Municipalities supports the home rule activities of any of its member cities, the cities of the state are united in their efforts to secure the efficient administration of the state and local sales tax. At the 1992 convention of the League, the following policy statement was adopted:

"We reaffirm our support for the compatibility between the state and local sales tax base (except as provided in K.S.A. 12-189a) and do not oppose legislation to make the local sales tax base uniform provided such legislation does not reduce the sales tax authority of cities in Kansas."

HB 200⁴ meets the tests stated in the above position statement. In fact, by removing the anti-stacking provision it actually broadens the sales tax authority of cities.

The League would urge the Committee to go one step further by amending the bill to eliminate the health care limitation of the bill and current law. If property taxes are going to be further reduced and stabilized across the state, additional local sales tax authority, subject to voter approval, is desirable. We urge your favorable consideration of this recommendation.

Thank you.

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Attachment 3

KANSAS MENTAL HEALTH COALITION

TESTIMONY

DATE: January 19, 1993
TO: Members, House Taxation Committee
FROM: Sheryl Sanders, Kansas Mental Health Coalition
SUBJECT: HB 2004

The Kansas Mental Health Coalition, comprised of mental health services providers, consumers, family members, and advocates, supports passage of HB 2004. We supported HB 2779 last session as well, and our rationale remains the same.

HB 2004 allows any city the option to ask its citizens if they want to increase the funds available for health care in their own community by paying an additional amount of sales tax. Cost of and access to health care continue to be priority issues for Kansans with severe mental illnesses and their families, for all Kansans. Any measure which addresses those issues, especially at a local community level should be approved.

Thank you.

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Attachment 4