

Approved: 4/7/94
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson Keith Roe at 9:00 a.m. on March 22, 1994 in Room 519-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Mark Burghart, General Counsel, Kansas Department of Revenue
Debbie McGlohon, Controller, La Siesta Foods, Inc., Topeka

Others attending: See attached list

Chairperson Roe opened the hearing on SB 768.

SB 768 - Senate Substitute for SB 768 - enterprise zone tax refunds.

Debbie McGlohon, La Siesta Foods, Inc., testified in support of SB 768. She said the company was told by the City of Topeka that they were establishing an enterprise zone in La Siesta's area and that La Siesta's new facility would qualify for tax incentives. Last year, the Audit Division of the Department of Revenue reviewed the La Siesta tax returns and disallowed the credit relating to their expansion, much to their amazement. Ms. McGlohon also said this bill does not contain any provisions that significantly reduce revenue (Attachment 1).

Mark Burghart, General Counsel, Department of Revenue, said that from the inception of the enterprise zone law, the Department's policy has been in place that in order to claim enterprise zone benefits, a business has to locate at a particular location within a city based upon the incentive provided by the enterprise zone legislation.

The minutes of March 18 and March 21, 1994, were approved as read.

Chairperson Roe directed the Committee to turn to SB 733.

SB 733 - public libraries; tax levies.

A motion was made by Representative Brown, seconded by Representative Mollenkamp, to table SB 733. The motion carried. Representatives Adkins, Crowell, Glasscock, Krehbiel, Lahti, Lowther, Novak, Pottorff, Shriver and Pottorff requested to be recorded as voting no.

Chairperson Roe directed the Committee to turn to HB 3068.

HB 3068 - Income tax refunds for retired military personnel.

Chairperson Roe reviewed proposed amendments to HB 3068 as shown on (Attachment 2).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, Room 519-S Statehouse, at 9:00 a.m. on March 22, 1994.

A motion was made by Representative Roe, seconded by Representative Empson, to amend HB 3068 to offer a \$40 million settlement which is subject to appropriation over 4 years, and that the settlement must be approved by the district court and bind all retirees in the class action. The motion carried.

A motion was made by Representative Wilk, seconded by Representative Empson, to pass HB 3068 favorable as amended. The motion carried.

The meeting adjourned at 10:05

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REPRESENTING

[illegible]

TESTIMONY OF DEBBIE MCGLOHON BEFORE THE HOUSE TAXATION COMMITTEE

SENATE BILL 768

My name is Debbie McGlohon, and I am the controller of La Siesta Foods, Inc. in Topeka. I am here to testify in support of Senate Bill 768. We have expanded our production facilities four times since 1982, and have found the provisions of business incentive programs extremely important in helping us build facilities and add jobs. We have seen our employment base go from 14 employees in the period just before our first expansion in 1982 to 270 employees currently. A large part of that growth has been provided through the fact that our plant is located in an enterprise zone that has been established by the City of Topeka. Recent actions by the Department of Revenue have reversed the promises that were made to us and all expanding businesses in the early years of that program.

Bowman Russell purchased La Siesta in 1978. In 1982, one of our customers asked us to expand our product lines which required us to build a plant to produce flour tortillas. This plant was financed with industrial revenue bonds issued by the City of Topeka. As part of the discussions with the City of Topeka, he was told that the City was establishing an enterprise zone in our area and that this new facility would qualify for tax incentives. We did begin construction on the plant in June, 1982. It was completed and production began in November, 1982. The City of Topeka completed the designation of the enterprise zones and obtained approval by the State of Kansas in October, 1982. Under the provisions available in the incentive legislation, we elected to defer taking the credit until 1985. Every year since we have worked with the Department of Revenue to determine the amount of the credit available. Last year, the Audit Division of the Department of Revenue reviewed our state tax returns and disallowed the credit relating to this 1982 expansion, much to our amazement.

Their rationale for disallowing the credit was that the enterprise zone did not exist in June, 1982 when we began construction. The enterprise zone was established in October, 1982 when it was approved by the State of Kansas. Since the enterprise zone did not exist, it could not have enticed us to build and therefore we should not have the credit available to us. Our position is that the credit should be determined when the facility is placed in service, and therefore the credit was claimed correctly. We cannot find any authority for the position being taken by the Department of Revenue, nor can they cite one for us. This is strictly their interpretation. We have countered with a number of reasonable arguments which they do not accept. Our arguments are:

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Attachment 1

- Even though the enterprise zone did not exist when the project was planned, business and city leaders were working on developing the program and encouraging businesses to grow in the area based on the knowledge that enterprise zones would be developed. A business should not be penalized because it proceeded based upon a reasonable assurance by a city.
- Establishing the start of construction as the time the credit is determined goes contrary to every other position of tax law. Depreciation, depletion, and all other tax items which are based on fixed assets are determined when the asset is placed in service. Under the definition by the Department of Revenue, land could be purchased in 1984 with the intent of future expansion with the expansion being started and completed in 1994. The Department would deny the credit because it is only available for 10 years, and they would consider that construction was started when the land was acquired with the intent to build.
- The intent of the law was to add jobs in areas designated as enterprise zones. The effect in 1982 was to add 46 jobs in November after the enterprise zone was established.

Currently, Kansas businesses face a dilemma. One part of State Government works very hard to promote business growth and development. Business is told about all of these incentive programs that are available if they grow or relocate. Then another part of State Government comes in after the business has made a commitment to see how much of that commitment can be avoided. That is not a strong business development program. It is not a consistent message to businesses that are considering the State for a location or expansion. There are only a few companies that could be currently affected by this law. It does not contain any provisions that significantly reduce revenue. It is a significant statement by the Legislature however. It is a statement that you wish to promote business development. It is a statement that you wish to be a willing partner to business growth and development, and not a reluctant bridegroom.

Thank you for the opportunity to address this committee, and for your attention.

Refunds of Tax on Federal Military Retirement Benefits

Proposed amendments to HB 3068

- (A) \$40 Million is subject to appropriation over 4 years (or the actual amount of the liability)
- (B) Settlement must be approved by the district court and bind all retirees in the class action
- (C)
 - 1) twice what was previously offered by the state (fall, 1993)
 - 2) by far the largest proposed settlement in Kansas' history of any legislation
 - 3) represents a compromise on a matter that is still in litigation and reflects the hazards of litigation to the state

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Attachment 2