

Approved: Feb 7, 1994
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:10 a.m. on February 4, 1994 in Room 519-S of the Capitol.

Members present: Senator Langworthy, Senator Tiahrt, Senator Martin, Senator Bond, Senator Corbin, Senator Feleciano Jr., Senator Hardenburger, Senator Lee, Senator Senator Sallee, Senator Wisdom

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

Conferees appearing before the committee: Senator Audrey Langworthy
Senator David Corbin
Senator Todd Tiahrt
Secretary Nancy Parrish, Department of Revenue
T. C. Anderson, Kansas Association of CPA's

Others attending: See attached list

APPROVAL OF MINUTES

Senator Bond moved to approve the minutes of February 3, 1994. The motion was seconded by Senator Tiahrt. The motion carried.

INTRODUCTION OF BILLS

Senator Langworthy requested the introduction of a bill which would reorganize the Board of Tax Appeals.

Senator Bond moved to introduce this bill. The motion was seconded by Senator Martin. The motion carried.

Senator Corbin requested the introduction of a bill, similar to HB 2706, which would state when an oil well has been out of production for 3 years and it is brought back, the oil well would be exempt from severance tax for 10 years.

Senator Corbin moved to introduce this bill. The motion was seconded by Senator Bond. The motion carried.

SB 480--TAXATION; INTEREST ON DELINQUENT PAYMENT AND REFUNDS SB 503--RELATING TO TAXATION; CONCERNING PENALTIES PRESCRIBED FOR CERTAIN DELINQUENT RETURNS AND UNPAID TAXES

Senator Todd Tiahrt, chairman of a subcommittee to work on SB 480 and SB 503, presented the subcommittee report. The other members of the committee were Senator Marian Reynolds and Senator Paul Feleciano, Jr. (Attachment 1) Senator Tiahrt went over the fundamental issues addressed in the two bills. He suggested these recommendations be put in balloon form. He did recommend the bills become effective on the printing in the Kansas Statutes instead of becoming effective at the printing in the Kansas Register,

Secretary Nancy Parrish said they were pleased with the report and could accept the recommendations. She said she did miss the problem with the section about waiver of penalties for voluntarily amended returns if the taxpayer has been audited by the IRS and then pays the state, it should not be a voluntary waiver.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:10 a.m. on February 4, 1994.

There was discussion in the committee that if a variable rate is used it should be more than 1 percent over the federal index. The state then might be the last one to be paid. A rate of 2 or 3 percent over the federal index was suggested.

Secretary Parrish said the Department of Revenue would like a higher rate. They would not like to be the last one to be paid.

T. C. Anderson, Kansas Association of CPA's, said their group appreciated the work of the subcommittee and the cooperation of the Department of Revenue. He said this bill is good for Kansas. They also like the concept of the variable rate when it becomes possible.

Committee members had questions about the problem with the computers of the Department of Revenue and why they could not work with a variable rate. Secretary Parrish said they have an old system and it is working to its capacity. She said it would take a lot of resources and training. The problem is with working with more than one year at a time. The Department is usually going back over at least a three year period. There were also questions about what other states are doing. At the present time, of the surrounding states, only Colorado uses a variable rate.

Senator Feleciano moved to adopt the subcommittee report and pass the bill favorably as amended. Senator Martin seconded the motion. The motion carried.

Senator Lee moved to amend the 1 percent above the variable rate to 3 percent. Senator Feleciano seconded the motion. The motion failed.

Senator Langworthy thanked the subcommittee members and others who worked on these bills.

The meeting adjourned at 11:50 a.m.

The next meeting is scheduled for February 7, 1994.

GUEST LIST
SENATE ASSESSMENT AND TAXATION COMMITTEE

DATE: February 4, 1994

| NAME (PLEASE PRINT) | ADDRESS | COMPANY/ORGANIZATION |
|---------------------|------------|----------------------|
| MARK A. BURGHART | TOPEKA | REVENUE |
| Steve Stoltz | " | " |
| Patrick Wenzel | " | KCBF |
| T.C. Anderson | Topeka | KSCPA |
| James Lawrence | " | Western Resources |
| Kevin M. Walker | Lawrence | Senate President |
| Michelle Quinn | Topeka | Atty. Gen. Small |
| Jack Smith | Topeka | KDOR |
| Tom Shindler | Topeka | KDOR |
| Stephanie Smith | Topeka | Washburn Univ. |
| Barry Hobb | Topeka | Washburn Univ. |
| KAREN FRANCE | " | KAR |
| Art Brown | " | K.S. CSR Dealer |
| Shirley Ann | Mission Ks | Washburn Univ. |
| Lisa Burton | Topeka | Washburn University |
| Debbie M'Clintock | Topeka | Washburn Univ. |
| James M. Jesse | " | BOTA |
| Bob Corkins | " | KCCI |
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February 1, 1994

Senator Langworthy, Chairman
Members of the Assessment and Taxation Committee

Subject: Subcommittee on SB 480 & SB 503

The members of the subcommittee included Senator Todd Tiahrt, Chairman, Senator Marian Reynolds and Senator Paul Feleciano.

The subcommittee met on January 28 and January 31 to deal with the subject of interest on income tax underpayment, refunds and interest on excise tax, as well as, penalty payments for tax returns.

SB 480 There are four fundamental issues addressed in SB 480.

1. Interest rate on underpayment of income taxes.

The current law has been in effect since approximately 1980 and requires 18% interest to be added to underpayment on income taxes. Currently, under federal law interest on underpayments is 7%, adjusted quarterly by the federal government. According to the Department of Revenue (DOR) the current computer system is unable to handle periodic adjustments for interest rates. It was recommended by the task force consisting of Mr. T. C. Anderson representing the Society of CPA's and Mr. Alan F. Alderson representing the Kansas Bar Association that DOR adjust their rate annually, based on a federal index. The DOR response was a flat rate of 12%.

The subcommittee recommends an application of 12% flat rate be adopted for tax years after 12/31/94 until 12/31/97 or sooner, at which time interest rates become variable and adjusted annually 1% over the federal index. The DOR is in the process of procuring a new computer system. By including this requirement in the statutes, the DOR will procure a system with the capability of applying variable interest payments. When such a system is on line in the DOR the Kansas statutes would more accurately reflect the current cost of money.

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2. Interest rate on refunds. The current law states that interest rates on refunds are paid at 12%. Federal law adjusts interest rates quarterly and is currently 6% per annum based on a federal index. Again the Kansas law was established in 1980 and does not currently reflect the lower cost of money. Once again the periodic adjustment is more than the current computer system can handle according to DOR. The DOR response was to pay a flat 6% rate, which matches the current federal rate, on all refunds.

The subcommittee recommends a 6% flat fee for tax years beginning after 12/31/94 until 12/31/97 at which time they would recommend an annually adjusted rate tied to a federal index. This would more accurately reflect cost of money rates.

3. Interest on excise tax refunds. This is not a common problem and there is some concern that the start date and complete date of such refunds for calculations are difficult to establish. The Bar Association thinks there are circumstances which clearly merit interest on refunds. However, DOR believes it would have a narrow application because of administrative problems, such as, establishing the period of application and whether or not the interest on refunds is passed on to those who paid the unnecessary tax. This could be limited to compensating use refunds, however, there would still be difficulty in the administration of such interest.

This is not a common problem and it has a very narrow application with massive administrative problems. The subcommittee recommends that this portion be excluded from SB 480 and allow current law to stand. Current law would then reflect no payment of interest on excise tax refunds.

4. Deposits on portions of disputed underpayments. At issue here is whether we should include statutory language which allows taxpayers to make deposits on any or all portion of disputed underpayments so that tolling of interest stops. DOR does not contest this issue.

The subcommittee recommends that statutory language be adopted allowing taxpayers to deposit on any or all portions of the disputed amount of tax plus interest, but not penalty. This would stop the tolling on interest.

5. Effective date of legislation. The subcommittee recommends having the bill become effective upon publication in the Kansas register. This would allow taxpayers to take advantage of the deposition portion of the bill.

SB 503 There are 6 issues related to SB 503.

1. Rate of penalty for underpayment when returns are filed. Current law is 10% penalty on underpayment for 60 days or less and 25% for those over 60 days. SB 503 would request a 1/2% per month to a maximum of 25%. The Department of Revenue's response was 10% on underpayment of 6 months or less and 25% on those over 6 months. This would extend the period of 10% for 60 days to 6 months.

It is the subcommittees recommendation that the statutes are changes to 10% penalty on underpayment for 6 months or less and 25% penalty on those over 6 months.

2. Rate of penalty underpayment when no returns are filed. Current law is 10% on underpayment for 60 days or less and 25% for those over 60 days. SB 503 requests 5% per month to a maximum of 25%. The Department of Revenue would consider 10% on underpayment for 6 months or less and 25% on those over 6 months. Again this would be an extension from 60 days to 6 months of a penalty of 10% and then 25% for all those over the 6 months time period.

The subcommittee recommends the same application as 1. (10% penalty on underpayment for 6 months or less and 25% penalty thereafter.)

3. Waiver of penalty authority. The current law has several diverse standards for the waiver of penalty in tax cases. SB 503 would have adopted a standard which allowed waiver upon reasonable cause, where the taxpayer acted in good faith. The department of revenue is concerned about the "in good faith" standard, because it is not a defined term.

The subcommittee recommends that the Secretary or the Secretary's designate have authority to waive any penalty if reasonable cause is shown. Subcommittee further recommends that the language in all tax statutes be reviewed and that the same "reasonable cause" waiver ability be applicable to all taxes.

4. Assessing penalties on valid extensions. Current law usually applies 25% since most extensions exceed 60 days. However, the DOR usually waives the penalty upon request. SB 503 would add 1/2% per month penalty on underpayments. The DOR would recommend an amendment to the statute to allow automatic waiver for penalties on valid extensions.

The subcommittee recommends the statutes be amended for automatic waiver of penalties for valid extensions if 90% of the tax was paid by the original due date.

5. Assessing penalties on voluntary amended returns. Currently the law allows for the assessment of a 10% penalty on underpayments on less than 60 days and 25% penalty for more than 60 days. Under certain circumstances the DOR will waive the penalties. SB 503 would add 1/2% penalty per month on underpayment. This becomes a policy question. Should we allow people who voluntarily amend returns to be penalized or should we waive penalties as long as there is a voluntarily amended return, if no audit is involved.

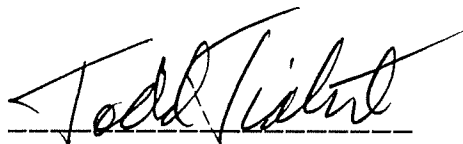
The subcommittee recommends the statutes be amended for automatic waiver of penalties for voluntarily amended returns if the taxpayer has not been advised that his return will be audited by the State of Kansas.

6. Assessing penalties on assessments resulting from audits. Current law is being interpreted to require a 25% penalty because an assessment resulting from an audit will extend beyond the 60 day period which triggers a 25% penalty. SB 503 would allow 1/2% per month for underpayment with a maximum of 25%. In the past the DOR assessed a 10% penalty except for the most grievous situations, where they were assessing 25%.

It is the subcommittees recommendation that the penalty on assessments by the State of Kansas be 10% if the tax shown due on the original return was paid with that return, unless, after review of the return the Secretary or the Secretary's designee determines that a 25% penalty is appropriate.

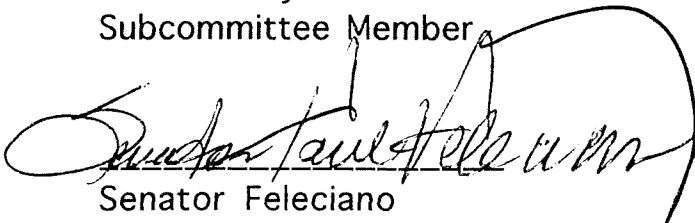
7. Effective date of legislation. The subcommittee recommends having the bill become effective upon publication in the Kansas register. This would allow taxpayers to take advantage of the deposition portion of the bill.

We, the undersigned agree with the subcommittee recommendations.



Senator Tiahrt
Subcommittee Chairman

Senator Reynolds
Subcommittee Member



Senator Feleciano
Subcommittee Member