

Approved: March 22, 1994
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:05 a.m. on March 21, 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 Reynolds, 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: Mark Burghart, Counsel, Department of Revenue
Sam Zickefoose, Exec. V.P., Mercantile Bank of K.C.
Jack Ovel, Exec. V.P., Boatmen's First National Bank of K.C.

Others attending: See attached list

APPROVAL OF MINUTES

Senator Tiahrt moved to approve the minutes of March 18, 1994. The motion was seconded by Senator Corbin. The motion carried.

HB 2987--INCOME TAX--DEFINITION OF RESIDENT TRUST

Mark Burghart, Counsel, Department of Revenue, reviewed HB 2987. (Attachment 1) He said it is not a Department of Revenue bill but this problem was brought to the attention of the Department by a legislator. He described the problem that exists with trusts and how this bill defines trusts to take care of the problem. However, there is a concern about the constitutionality of the bill. He said this bill changes the definition of resident trusts for income tax purposes because Kansas income tax is being avoided. To be considered a Kansas trust, it must be administered in Kansas. If the trusts are being administered out of the state, Kansas does not collect any income tax on the trusts. This bill adopts a definition of residents trust as used in Missouri and a number of other states to provide that a resident trust includes: (1) a trust created by will of a decedent who at the time of death was domiciled in this state; or (2) a trust created by, or consisting of property of, a person domiciled in this state on the date the trust or portion of the trust becomes irrevocable.

There were questions from the committee about how much money this bill will bring in? Mr. Burghart said he did not know because they do not have a list of trusts administered out of state. He was also asked if the Department could obtain a list of trusts out of state that might be under this category. Mr. Burghart said he was not sure if a list could be obtained.

Sam Zickefoose, Exec. V.P., Mercantile Bank of K.C., spoke in opposition to HB 2987 in its present form. He introduced Jack Ovel, Exec. V.P., Boatmen's First National Bank of K.C., who also spoke in opposition to HB 2987. He said they just became aware of this bill and wanted to share their concerns. If the trust accumulates income and it is paid out to a resident in Kansas, income tax is paid in Kansas. In this bill, irrevocable trusts are being spoken of. He said 90 percent of the irrevocable trusts do not accumulate income and the only time money is paid out is if income is accumulated or if there are capital gains. He said he thought this subject should be studied a great deal more due to the magnitude of the bill.

Mr. Zickefoose said there is a recent Missouri Supreme Court Case which would declare the points of HB 2987 as invalid. This is not just a Missouri-Kansas issue; it would affect all states around Kansas; there are trusts in all of these states. He said many trusts are very old and it would be difficult to collect the records. Also, there would be a significant enforcement issue.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:05 a.m. on March 21, 1994.

Mr. Ovel said there are a number of issues which need to be studied at length before this bill is passed. He opposes HB 2987 as it currently is being proposed

The hearing was closed on HB 2987.

HB 3011--PROPERTY TAXATION OF ESCAPED REAL PROPERTY

Senator Langworthy called the attention of the committee to HB 3011 and asked for discussion.

Senator Martin moved to pass HB 3011 favorably. The motion was seconded by Senator Corbin. The motion carried.

The meeting adjourned at 11:35 a.m.

The next meeting is scheduled for Tuesday, March 22, 1994.

DATE: _____

[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
FAX (913) 296-7928

Department of Revenue
Legal Services Bureau

MEMORANDUM

To: The Honorable Audrey Langworthy, Chairperson
Senate Committee on Assessment and Taxation

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

Date: March 21, 1994

RE: H.B. 2987 - Definition of Resident Trust

Thank you for the opportunity to appear in support of H.B. 2987. The bill amends the definition of resident trust which is utilized for state income tax purposes. The Department of Revenue has recently learned that the existing definition of resident trust allows certain trust income to avoid taxation by the State of Kansas. Under current law, a trust is considered a resident trust and subject to the state income tax only if the trust is administered in the state. H.B. 2987 would amend the definition to provide that a resident trust includes: (1) a trust created by will of a decedent who at the time of death was domiciled in this state; or (2) a trust created by, or consisting of property of, a person domiciled in this state on the date the trust or portion of the trust becomes irrevocable. Missouri and a number of other states have adopted the definition of resident trust proposed in H.B. 2987.

KANSAS RATE STRUCTURE

K.S.A. 1993 Supp. 79-32,110(d) imposes a tax on the taxable income of trusts. The Kansas taxable income of a trust is the federal taxable income with certain state adjustments. The state adjustments generally are those used to determine Kansas taxable income for individual taxpayers. The rates applicable to trusts are as follows:

<u>Taxable Income</u>	<u>Tax Rate</u>
Not over \$20,000	4.4%
\$20,000 - \$30,000	7.5%
over \$30,000	7.75%

Senate Assessment & Tax
March 21, 1994
Attach 1-1

Under the existing statutory scheme, Kansas residents need only appoint a Missouri trustee to avoid income tax on the trust income in both Kansas and Missouri. This situation is allowed to occur simply because of the differing definitions of resident trust between Kansas and Missouri.

EXAMPLE:

CURRENT LAW

Kansas resident creates a trust the assets of which consist primarily of intangibles (stocks, bonds, CD's.) A Missouri trustee is appointed. The trust generates taxable income of \$40,000. Under these circumstances, no tax is paid in Kansas or Missouri on the trust income.

H.B. 2987

Same facts as above. Under H.B. 2987, the tax liability to the State of Kansas would be \$2,405. No tax would be paid to the State of Missouri on the trust income.

The further development of interstate banking is expected to increase the number of Kansas residents creating trusts which are administered in Missouri or other states. The revenue loss to Kansas resulting from the current statutory scheme cannot be determined because no data exists which identifies the precise number of trusts where a nonresident trustee has been appointed. It is apparent that the enactment of H.B. 2987 would have a positive fiscal impact on the state general fund.

The Department respectfully requests your favorable consideration of H.B. 2987. I would be happy to respond to any questions you might have.