

Alsop Sand Co. Inc.

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Senate Committee on Assessment & Taxation

Mr. Chairman, ladies and gentlemen of the committee, good morning.

I am Dane Barclay, a third generation Kansas sand producer, President of Alsop Sand Co. Inc., President of the Kansas Aggregate Producers Association and the guy that defended his family business with Alsop Sand Co. Inc. verses the State of Kansas, in 1992.

That legal battle was to clarify specifically what was sales tax exempt and what was not, within the aggregate industry.

As I tell this story, I want you to remember that this is not an isolated case. This is going on industry-wide.

Alsop Sand Co. Inc. verses the State of Kansas involved an audit, where Kansas Department of Revenue (KDOR), sales tax division, assessed about \$67,000 in additional sales tax.

We agreed that about \$3,200 was due.

We made the decision that if nothing else came out of this we wanted to clarify what was taxable and what was not.

Phrases like "Bait & switch" or "Let's make a deal" should not describe state policy, but in reality that is what happened.

The day before the first hearing KDOR staff called and offered to reduce the assessment by half, if we would "make a deal and sign a nondisclosure agreement".

Now, let that soak in a second; KDOR will reduce your alleged liability by \$33,000, if you promise not to tell anyone.

We asked which part of the audit is taxable and what part is exempt?

We wanted them to put that in writing, so we would know how to decide in the future.

"Their answer was absolutely not. We will not do that".

"Let's make a deal", the underlying belief by KDOR was that our company would simply give in and settle because it would cost us significantly less than the legal fees associated with an appeal.

The settlement amount had nothing to do with tax due; it was a strong-armed extortion tactic, to collect tax that was never due.

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We declined their offer. Our appeal was about principle and a desire for clarity.

The Board of Tax Appeals agreed with Alsop Sand Co., regarding what was exempt, KDOR appealed part of the decision to the State Supreme Court.

Before the Court reached a decision, legislation was passed and KSA 79-3606, kk clarified many of the issues.

With a combination of the Board of Tax Appeals decision and the legislation, the line between exempt and taxable was much clearer.

In the end we paid the \$3, 200, all the tax that was ever due. It took eight years and more legal fees than I care to admit, but we got the clarity we were searching for.

In 2008 we were audited again and out of about 2 ½ million dollars in annual expenses we were assessed an additional \$368 sales tax. The audit confirmed that we were doing it right, we had the exempt line, drawn correctly.

In the last couple years within KDOR staff changed or certainly something changed, because through inner office policy the KDOR decided to change the intent of the law.

KDOR did not base this on statutory changes, nor were new rules & regulations involved; these changes were based on inner office discussions, which differed from the historically accepted intent of the law.

Last year KDOR audited another Aggregate Producer and assessed a number of areas. Areas that BOTTA had said were exempt and were clearly tax exempt under KSA 79-3606, kk. Again KDOR assessed a huge amount of tax and suggested "let's make a deal".

"Bait & switch and Lets make a deal" should never be state policy. It is not fair or reasonable and it is morally wrong.

The Board of Tax appeals said it was exempt. KSA 79-3606 kk states it is exempt. Past audits approved it as exempt. But now KDOR has decided to ignore all this legal precedent and override established state policy and retroactively to boot. This kind of behavior is not fair or reasonable and it degrades the integrity of state government.

This is comparable to you buying a new house and three years after you have moved in, being forced to pay a higher purchase price, because the real estate agent needs more money.

If this decision is allowed to stand, you are saying that administrative staff is allowed to override the lawfully made decisions of elected and appointed officials. For KDOR to change the way they interpret the statute and retroactively assess additional tax years after the fact, is simply wrong.

It removes our ability as an industry to assess our costs in advance or to recover those costs and it creates an unstable business environment.

We need language which clarifies what is exempt, in a manner so clear, that KDOR staff cannot mess with it, manipulate it or subvert legislative intent. SB 234 does exactly that.

Please support SB 234.

Dane Barclay
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