

Approved On: _____

Minutes of the House Committee on Taxation. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on March 8, 1988 in room 519 South at the Capitol of the State of Kansas.

The following members were absent (excused):

Representatives Grotewiel, Wunsch, Spaniol, Reardon,
Snowbarger, Lowther

Committee staff present:

Tom Severn, Legislative Research
Chris Courtright, Legislative Research
Don Hayward, Reviser of Statutes
Millie Foose, Committee Secretary

Mark Burghart, General Counsel Department of Revenue, spoke as a proponent for HB-2627 - AN ACT amending the Kansas compensating tax act; concerning the definition of retailer doing business in this state. Mr. Burghart explained the problems retailers had encountered under the old law and said that the new definition is designed to establish a more definite state law which will permit Kansas to tax mail order sales with a Kansas destination. (Attachment 1)

Representative Gatlin moved, second by Representative Smith, to report HB-2627 favorably for passage. The motion carried.

John Luttjohann, Director of Taxation, explained HB-2625 - AN ACT amending the Kansas retailers' sales tax act; providing for the collection of the tax imposed thereunder. He said this bill provides the Director of Taxation with the authority to proceed directly against the consumer or user to collect the full amount of sales tax due under the Retailers' Sales Tax Act when the full amount of the sales tax has not been paid to the retailer. (Attachment 2)

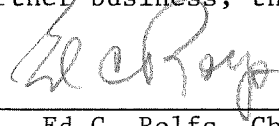
Representative Gatlin moved, second by Representative Leach, that HB-2625 be reported adversely. The motion failed.

After committee discussion, Representative Wagnon moved, second by Representative Adam, to pass HB-2625 favorably. The motion carried.

At the request of the Department of Revenue, Representative Aylward moved, second by Representative Crowell, to introduce a bill relating to Operation Fair Share. The motion carried.

The minutes of the March 4 meeting were approved.

There being no further business, the meeting was adjourned.



Ed C. Rolfs, Chairman



KANSAS DEPARTMENT OF REVENUE
Office of the Secretary
Robert B. Docking State Office Building
Topeka, Kansas 66612-1588

M E M O R A N D U M

To: The Honorable Ed Rolfs, Chairman
House Committee on Taxation

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

Re: 1988 H.B. 2627

Date: March 8, 1988

H.B. 2627 was a recommendation of the 1987 Special Committee on Assessment and Taxation. The bill amends the compensating use tax act by redefining the term "retailer doing business in this state." Under the new definition, a vendor would be deemed to be doing business in the state if the vendor systematically solicits orders for items of tangible personal property within the state via catalogs, periodicals, advertising flyers, mail, telegraphy, telephone computer data base, cable, optic, microwave as well as radio, television and print media. The new definition is designed to establish a more definite state law which can be used to successfully challenge National Bellas Hess and permit Kansas to tax mail order sales with a Kansas destination. Litigation is proceeding in another state which has adopted nearly identical language to that in H.B. 2627 in order to overturn the ruling in National Bellas Hess.

NATIONAL BELLAS HESS

In 1967, the United States Supreme Court ruled in National Bellas Hess, Inc. v. Department of Revenue, 386 U.S. 753 (1967) that a mail order house that was located in Missouri and which had no outlets or sales representatives in Illinois could not be required to collect Illinois use tax. The decision in favor of Bellas Hess was based on Commerce Clause and Due Process grounds. The Court held that differing tax rates among the states, nonuniform exemptions and stringent record keeping requirements imposed an impermissible burden on interstate commerce in violation of the Commerce Clause.

The Court also determined that there was not sufficient nexus with the taxing state to require the mail order house to collect compensating use tax. The Court relied on traditional nexus concepts which required actual physical contact with the market state.

An increasing number of state tax experts believe Bellas Hess would be overturned should the Supreme Court again have the opportunity to consider a case with comparable facts. The administrative burden on out-of-state vendors which existed in 1967 is substantially reduced by the increased use of

computer technology. Record keeping requirements which were a major concern of the Court when the case was considered 20 years ago no longer create an impermissible burden on interstate commerce. In point of fact, mail order houses generally must be computerized to compete effectively in the marketplace.

It is also argued that any limitations which might have been imposed by the Due Process Clause are no longer a valid concern. A convincing argument may be made that sufficient nexus exists through the continuous solicitation and exploitation of consumers in a market state. Actual physical presence is not required. A mail order house which continuously solicits in a state is deemed to have purposefully availed itself of the benefits and protections of the market state, including access to state courts and to an orderly market.

BENEFITS OF LEGISLATION

There exist two general benefits by imposing the duty to collect compensating use tax on mail order houses. First, enforcement is a fair way to increase revenue without imposing new taxes. Second, legislation such as H.B. 2627 would place in-state retailers on a par with out-of-state retailers for state tax purposes. In-state retailers currently are placed at a competitive disadvantage against those who use the state as a market but are not required to collect taxes.

FISCAL IMPACT

The maximum potential additional collections from mail order sales for fiscal year 1989 would be between \$15 and \$21 million. The maximum potential of \$21 million assumes that no federal legislation would be passed which would establish a de minimus rule or a minimum threshold of sales before a firm would be required to collect state use taxes. The lower maximum of \$15 million assumes federal legislation establishes a \$12.5 million de minimus rule.

These estimates are derived from national sales data, are spread among states on the basis of personal income, are dependent on assumed growth rates from 1986 to 1989 and assumptions about nexus and current filing patterns.




KANSAS DEPARTMENT OF REVENUE

Division of Taxation

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MEMORANDUM

TO : THE HONORABLE ED ROLFS, CHAIRMAN
HOUSE COMMITTEE ON TAXATION

FROM: JOHN R. LUTTJOHANN 
DIRECTOR OF TAXATION

DATE: MARCH 8, 1988

RE: HOUSE BILL 2625

I appreciate the opportunity to appear before you today on House Bill 2625. This bill amends K.S.A. 79-3604 by providing the Director of Taxation with the authority to proceed directly against the consumer or user to collect the full amount of sales tax due under the Retailers' Sales Tax Act when the full amount of the sales tax has not been paid to the retailer. If passed, this change would be effective on July 1, 1988.

Often times on audit, the department discovers that items have been purchased free from sales tax, and used by the taxpayer. Presently, our recourse is to contact the retailer from whom the purchase was made, and attempt to collect the tax from him. The retailer would then contact the taxpayer for payment of his tax obligation.

The situation typically involves a taxpayer who has a consumer's use tax account. The taxpayer advises the retailer not to charge tax, and provides the use tax number to the retailer. Unless a retailer is extremely familiar with the state's account numbering system, it is logical for him to assume that the number is a resale exemption number. This change, with an amendment suggested below, would allow us to collect the **state and local tax** from the taxpayer directly. If the taxpayer does indeed pay the consumer's use tax, it is only the state tax that is paid, and the local tax is avoided. The bill permits the department to collect the tax from the taxpayer who owed it in the first instance.

The department respectfully requests an amendment to the bill. We would suggest a corresponding amendment to the Local Retailers' Sales Tax Act to insure that local sales tax as well as state sales tax can be collected from the consumer or user when such taxes have not been paid to the retailer.

I'd be happy to respond to any questions you may have.