Approved May 4, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION.

The meeting was called to order by Senator Fred A. Kerr at
Chairperson

11:00 a.m./p.m. on March 30, 1988 in room 519-S of the Capitol.

All members were present except:

Committee staff present:
Tom Severn, Research
Chris Courtwright, Research
Don Hayward, Revisor's Office
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Chairman Kerr called the meeting to order and said the agenda would be discussion and possible action on the sales tax issue. Attachment 1 is a list of amendments that has been submitted to the committee by various organizations for consideration.

Chairman Kerr said that motions and votes would be taken on sales tax items which members wanted to include in a bill recommended by the committee. He said that after the items are voted on that a motion would than be in order which would amend H.B. 2626 by including the committee items and by striking other items which might be in H.B. 2626 as amended by House Committee of the Whole.

Committee Discussion

1. Grass Seed Issue. Senator Thiessen moved that the new section four, lines 777 through 794 of H.B. 2626, as amended by House Committee of the Whole, be included in the committee recommendation. Senator Allen seconded. Motion carried.

2. Software Issue. Senator Burke moved that the language in H.B. 2626 pertaining to software plus additional language pertaining to "license to use" (Att. 2) be included in the committee report. Sen. Parrish seconded. Motion carried.

3. Cancer Society Issue. Senator Hayden moved that language pertaining to educational materials distributed free of charge (Att. 3) be included in the committee report. Senator Parrish seconded. Motion carried.

4. Weatherization Issue. The weatherization amendment would exempt purchases of community action groups to repair or weatherize low-income housing. Senator Allen moved that language in H.B. 2626 pertaining to this weatherization program be included in the committee report. Senator Burke seconded. Motion carried.

5. Advertising Issue. Senator Salisbury moved that language in H.B. 2626 pertaining to advertising services plus the language "advertising related business performing the same service" be included in the committee report. Senator Hayden seconded. Motion carried.

6. Machinery Issue. In response to a question, Secretary Harley Duncan said that his staff was researching the $16 million dollar fiscal note * that had been questioned, but that they did not have information at this time which would cause them to change the fiscal note. Senator Burke moved that the language in H.B. 2626 pertaining to the exemption of manufacturing machinery and equipment be included in the committee report. Senator Thiessen seconded. Senator Montgomery offered a substitute motion to add "farm machinery" to the amendment. * Attach 4

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION,

room 519-S, Statehouse, at 11:00 a.m./~~p.m.~~ on March 30, 1988

Senator Hayden seconded. Substitute motion lost. Primary motion carried.

Senator Hayden moved to include language to exempt drill bits, cement, and explosives, as requested by KIOGA in S.B. 75 in the committee report. Senator Salisbury seconded. Senator Montgomery offered a substitute motion to add "farm machinery" to this amendment. Sen. Hayden seconded. Substitute motion was lost. Primary motion carried.

Senator Frey moved to amend House Bill 2626 to include items in the bill which have been adopted by this committee and to exclude items from the bill which have not been adopted by this committee and that H.B. 2626 be recommended favorably for passage as amended. Senator Hayden seconded. Motion carried. Senator Mulich asked to be recorded as voting "no."

Senator Hayden moved to adopt the minutes of the March 29th meeting. Senator Thiessen seconded. Motion carried.

(Attachment 5 is information provided for the committee on S.B. 655 by Paul D. Coleman.)

Meeting adjourned.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
3/30/88	Glenn Hawkins	Box 300 - Room 1752 Tulsa 74102	Cities Service
1c	Robert Anderson	Olathe	Mid Cont Oil & Gas
3-30	Paul A. Coleman	434 SW Topeka Blvd. 03	Ks Tob-Can Dist Ven
3-30	Jeri Rezpoch	3003 Van Buren	Am Cancer Society
3-30	Claudia J. Fugate	3003 Van Buren	American Cancer Society
3-30	Jim McBride	Topeka	observer
	T.C. Anderson	Topeka	KSCPA
	Jan Vacik	Topeka	KSCPA
	Walter Dunn	✓	EKOGA
	Bud Grant	Topeka	KCCI
	Melvin Minor	Stafford, KS	Visitor
	Marion Meschberger	" "	"
	Anita Meschberger	Stafford, Ks.	Visitor
	Carolyn Minor	" "	"
	Gayle Minor	" "	"
	Jim Burgess	Topeka	Affiliated Fitness Centers
	Kathryn Dysart	Wichita	USD 259
	Mary E. Turkington	Topeka	Ks Motor Carriers Assn
	Rich McKee	Topeka	KLA
	Ronald R. Hein	"	KAC/KAA
	Rebecca Rice	Topeka	KAC/KAA

PROPOSED SALES TAX AMENDMENTS -- 1988 SESSION

Provision	Bill or Conferee
Exempt Mfg Machinery & Equipment	HB2626
Exempt food products for indigents, homeless	HB2626
Exempt purchases of nonprofit hist societies, museums, and Cosmospheres	HB2626
Exempt seeds, seedlings, services to prevent soil erosion on all ag land	HB2626(COW)
Exempt seeds to prevent soil erosion on CRP land	S446
Exempt textbooks, uniforms, instruments, act ticket sales by schools	HB2626
Exempt flat rate intrastate service charges	HB2626
Exempt admissions to cultural and historical events occurring triennially	HB2626(COW)
Exempt purchases of comm action groups to repair or weatherize low-income housing	HB2626(COW)
Clarification language re computer software	HB2626 & SB738
Suggested amendments to computer software language	TC Anderson
Suggested amendments to computer software language	John Eisele
Clarification re taxation of auctioneers	HB2626
Exempt transfer of m vehicles from corporations to shareholders as a result of liquidation	HB2626
Extend tax to mobile phone, beeper, answering services	HB2626
Extend sunset provision of KSA 1987 Supp 79-3642	HB2626 & HB2995
Dept of Revenue may not go back beyond 3 yrs absent a finding of fraud	HB2626
Remove "act of God" lang from orig constr exemption	HB2626
Change tax treatment of vending machine receipts	SB655
Exempt admissions and services of health spas	Affil Fitness Centers
Exempt educ mats prod in other states from use tax	Am Cancer Society
Exempt new farm machinery	Farm Bureau
Exempt services by broadcast stations and ad ag	Hank Booth
Exempt services of adv agencies	Ron Hein
Exempt drill bits, cement, dynamite as consumables	KIOGA

Proposed Amendment to HB 2626
(As Amended by House Committee of the Whole)

On page 1, in line 45, before "or" by inserting ", license to use";

On page 2, in line 60, by striking "and computer software" and inserting ". Such term shall include any computer software program which is not a custom computer software program, as described by subsection (s) of K.S.A. 1987 Supp. 79-3603, and amendments thereto"

Proposed Amendment to HB 2626
(As Amended by House Committee of the Whole)

On page 21, in line 772, by striking "and"; in line 776, by striking the period and inserting "; and"; after line 776, by inserting a new subsection to read as follows:

"(rr) All sales of educational materials purchased for distribution to the public at no charge by a nonprofit corporation organized for the purpose of encouraging, fostering and conducting programs for the improvement of public health.";

A & T 3/30/88

Att. 3

MEMORANDUM

March 10, 1988

TO: Senate Assessment and Taxation Committee, House Taxation Committee

FROM: Kansas Legislative Research Department

RE: Fiscal Impact of H.B. 2626 as Amended by House Taxation Committee

The purpose of this memo is to update and clarify several aspects of the fiscal note on H.B. 2626 as amended by the House Taxation Committee.

Exemption of Manufacturing Machinery and Equipment

The latest data available for Kansas from the 1985 Annual Survey of Manufacturers show \$602 million of purchases of new manufacturing machinery and equipment in calendar year 1985. Data from the 1982 Census of Manufacturers indicate that approximately 92.3 percent of such plant expenditures were for new machinery and equipment used directly in the manufacturing process, and approximately 4.0 percent of such expenditures were for computers and related data processing equipment. Assuming that half of the computer expenditures would be for "high-tech" computers that would be exempt under the Committee amendment, roughly 94.3 percent of all purchases of new manufacturing machinery and equipment would be exempt under the provisions of the bill. Applying 94.3 percent to the \$602 million figure yields an estimated amount of purchases that would have been exempt in calendar year 1985 of \$568 million.

In terms of growth, based on the FY 1989 Consensus estimate and adjusting for the 1986 sales and use tax rate increase, all sales tax receipts will have increased by an estimated 1.9 percent annually from FY 1985 through FY 1989. Based on data from the Annual Survey of Manufacturers, expenditures for new manufacturing machinery and equipment in Kansas grew by roughly 6.9 percent annually from calendar year 1984 to calendar year 1985. However, given the history of the Kansas economy since 1985 and taking into account recent federal tax law changes that should substantially reduce the incentive for capital expenditures (including elimination of the investment tax credit and different depreciation rules), it seems reasonable to assume a lower rate of growth in these expenditures from 1985 to FY 1989.

Another issue that affects the fiscal note of the proposed exemption is the extent to which these expenditures are already exempt within enterprise zones. The Department of Revenue has made calculations based on the assumption that somewhere between 40 and 75 percent of the new manufacturing machinery and equipment expenditures are within enterprise zones and are already exempt, but its latest estimate, dated February 26, 1988, was based on the 40 percent figure.

The following table provides a range of different fiscal impacts using different growth rate and enterprise zone exemption assumptions. The bill provides that the exemption would take effect on January 1, 1989, so five months of receipts in FY 1989 would be impacted. All dollar amounts are in millions.

A & T 3/30/88

Att. 4

	Percent of Expenditures Now Exempt Within Enterprise Zones							
	40 Percent		50 Percent		60 Percent		80 Percent	
	FY 1989	FY 1990	FY 1989	FY 1990	FY 1989	FY 1990	FY 1989	FY 1990
Annual Growth Rate from Calendar Year 1985								
7 percent	$ 7.2	$ 18.5	$ 6.0	$ 15.4	$ 4.8	$ 12.3	$ 2.4	$ 6.2
5 percent	6.7	17.0	5.6	14.1	4.5	11.3	2.2	5.7
3 percent	6.3	15.6	5.2	13.0	4.2	10.4	2.1	5.2

It can be seen that an estimate of how much the exemption would reduce sales and use tax revenue depends greatly on the assumptions of annual growth since 1985 and of the amount of expenditures already exempt due to the enterprise zone law. For FY 1990, the loss of revenue would range from $18.5 million (7 percent growth and 40 percent already exempt) to $5.2 million (3 percent growth and 80 percent already exempt). The Department of Revenue's estimate is based on 5 percent growth and 40 percent already exempt.

The fact of the matter is that nobody knows what the growth rate will be from 1985 to 1990 nor the percentage of expenditures that will be exempt under present law. The Department of Revenue's estimate of $17 million for FY 1990 translates into an expenditure of $425 million by firms not in an enterprise zone.

Exemption for Federal Conservation Reserve Program (CRP)

Another major provision of the bill would exempt purchases of grass seed, tree seedlings, and services used in connection with the federal CRP. The Department of Revenue has calculated that all revenue from such purchases represents a $7.8 million opportunity gain for FY 1989. However, since the Consensus Estimating Group was not aware of the issue at the November 1987 meeting, any revenue received from such purchases must be viewed as an addition to the estimate. Therefore, passage of the exemption for these purchases would not have an impact on the SGF estimate made last November.

The Department of Revenue also has estimated that the refund provision for CRP purchases made prior to enactment of the bill would cost approximately $3.0 million in FY 1989. However, this fiscal note was based on a potential liability of about $5.00 per acre with approximately three million acres assumed to have been enrolled in the program through the February sign-up period, as well as an assumption that the tax had been collected on 20 percent of the purchases. Only about 2.37 million acres were enrolled through the February sign-up period, however, so, assuming collections of 15 to 20 percent, the maximum potential refund figure should be closer to $2.0 million.

Kansas Tobacco-Candy Distributors & Vendors, Inc.

Paul D. Coleman - Executive Secretary

(913) 234-2416 or 235-3460 434 S.W. Topeka, Blvd. Topeka, Kansas 66603

SENATE BILL 655

MEMBERS OF THE KANSAS SENATE

ASSESSMENT AND TAXATION COMMITTEE

This memorandum is supplemental to the written and oral testimony presented to this Committee on March 29, 1988, and is in response to questions posed by members of the Committee and reservations exzpressed by the Department of Revenue. Our Association recognizes that this bill represents a departure from normal sales tax procedures; however, we also know that big problems require big solutions.

The constitutionality of the bill has been questioned because of a perceived inequity in the assessment and collection of sales tax. On the other hand, because of the machines' inability to collect pennies, the sales tax already affects the vending industry differently from other retailers. Within their class, all vendors would still be taxed identically. Further, by deeming the sale to the vendor to be the taxable event, the full 4% tax will still be collected on the total price paid by the vendor.

The Kansas Legislature has already recognized that sales tax cannot (and should not) be applied uniformly to all goods and services, but rather that reasonable changes should be made to handle reasonable problems. A reading of the existing statute shows that there are already nineteen sub-sections for the assessment of the sales tax, followed by thirty-eight sub-sections of exemptions.

The National Automatic Merchandising Association, the trade association of vending machine operators, has dealt with this very issue in several states. More than thirty states have some type of different sales tax provision for vending machines, and each has passed constitutional muster. Furthermore, such changes have proven not only reasonable but beneficial to the states because of the increased compliance, easier auditing, and inflationary trends discussed yesterday.

Attached is a brief monograph prepared by the NAMA dealing with these and other issues of SB 655. We urge you to keep this bill alive by amending its provisions onto HB 2626.

Respectfully submitted,

A & T 3/30/88

Att. 5

KANSAS TOBACCO-CANDY Kt-cd&v DISTRIBUTORS and VENDORS, INC.

ARGUMENTS IN SUPPORT OF SB 655 A PROPOSED BILL TO LEVY SALES TAX ON THE COST PRICE OF PRODUCTS SOLD THROUGH COIN-OPERATED VENDING MACHINES

Because a vending machine mechanically cannot collect pennies, the operator of vending machines cannot collect the sales tax from the consumer. Therefore, the vending company, not his customer, pays the sales tax.

The proposed bill SB 655 now before Kansas Senate Assessment and Taxation Committee would levy the sales tax on the cost price of products other than cigarettes sold through vending machines in lieu of the retail selling price to the vending machine customer. Such a procedure would make the sales tax more efficient and productive to the state over the long term because of the following result. The vending company in many instances can not increase its retail price when the cost of the product he sells increases.. This is because, as noted above, the vending machine is tied to nickel increments when prices at the machine are changed. So, for example, when the price of sugar or chocolate rises causing a two cent increase in the wholesale price of a candy bar, the vending company may not be able to increase its vending machine price by five cents because of customer resistance. On the other hand, if the sales tax were levied on the cost price of the candy bar to the vending company, the revenue received by the state would be reflected in the increase in the wholesale price of the product.

If the sales tax were levied on the cost price of the products sold through vending machines, the payment and enforcement of the sales tax would be more simple for both the vending company and the state. The tax liability of the vending company can be determined simply by applying the sales tax rate to the invoices representing wholesale purchases by the vending company of products sold in vending machines. Audits of vending companies can thereby be completed more quickly and accurately since the only items for review would be such invoices. (Of course, retail sale figures would be maintained.)

The vending industry is the principal supplier of food and beverage service to blue collar workers in factories, hospitals, schools and offices. Being unable to collect the sales tax other than by increasing prices in nickel increments, the price of vended products is forced upward beyond the sales tax liability thereby increasing inflationary pressures on these workers, the group of people least able to carry the burden.

The vending company's method of retailing differs substantially from other forms of retailing. In most situations, the consumer must go to an outlet selling goods and merchandise in order to buy. In the case of the vending company, the goods and merchandise are brought to the customer, as, for example, in plants, offices, hospitals and schools. Therefore part of the price paid by customers when buying from a vending machine is directly allocable to service.

SB 655 would provide modest tax equity to vending companies and help equalize their competitive disadvantage with other retailers.