

Approved: 3-5-97
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION..

The meeting was called to order by Chairperson Phill Kline at 9:00 a.m. on January 31, 1997 in Room 519-S of the Capitol.

Committee staff present: Tom Severn Legislative Research Department
Don Hayward, Revisor of Statutes
Shirley Sicilian, Department of Revenue
Ann McMorris, Committee Secretary

Conferees appearing before the committee: None

Others attending: See attached list

Chair opened for discussion, amendments and motions on

HB 2031 - School district property tax levy reduced

Hayward summarized the bill as changing mill levy to be imposed by school districts from 33 mills to 29 mills in 1997-98 school years and to 25 mills in 1998-99 school years and some car taxes are involved.

Moved by Rep. Empson, seconded by Rep. Shultz, pass out HB 2031. Motion carried.

Chair called on Shirley Sicilian to present a review of **HB 2105** - Kansas tax equity and fairness act of 1997. (Attachment 1) Also reviewed the regulations on exemption certificates. (Attachment 2)

Chair appointed a subcommittee to study **HB 2105** and report to the full Taxation Committee on Thursday, February 6. Members of subcommittee are Reps. Powell (chair), Mays, Pugh, Wempe and Larkin.

Approval of Minutes

Moved by Rep. Presta, seconded by Rep. Larkin, approval of minutes of Taxation Committee meetings held on January 14, 15, 16, 17, 21, 22, 23, 27 and 28. Motion carried.

The next meeting is scheduled for February 3, 1997.

Adjournment.

Attachments - 2

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Office of Policy & Research

MEMORANDUM

TO: Phill Kline, Chairman
House Taxation Committee

FROM: Shirley Klenda Sicilian

RE: Bullet Point Summary of House Bill 2105
Taxpayer Equity & Fairness Act

DATE: January 31, 1997

Chairman Kline and Members of the House Taxation Committee, thank you for the opportunity to summarize the contents of the Taxpayer Equity & Fairness Act contained in House Bill 2105. As you heard yesterday, this bill is the result of months of collaboration between taxpayers and taxpayer representative in Kansas, and the Kansas Department of Revenue. The bill has 31 substantive sections, so I'd like to provide a bullet-point list which shows how the sections are grouped substantively and what the key components are:

- I. Interest rate parity (sections 1, 2 and 3)**
 - A. interest on refunds, same as interest on payments
 - B. includes income and excize taxes
 - C. rate tied to internal revenue code
 - D. maintained the "+1" in deference to legislative intent
- II. Publication of all department policy (section 4)**
 - A. in a medium readily accessible to taxpayer (internet is one possibility)
 - B. publish a notice in the Ks. Register
- III. Informal reconsideration conference (sections 5 through 14; 10 describes procedure)**
 - A. informal, in place of a formal KAPA proceeding
 - B. legal representation not required
 - C. 9 months to reach a final determination
 - D. sec. or sec.'s designee makes final determination
- IV. Private Delivery Services allowed (section 15)**
 - A. to same extent as the feds do.
- V. Employee evaluations (section 16)**

- A. No department employee will be evaluated based on the total amount of assessments issued or on a percentage of taxes collected through settlements, or other means, before final judgment.
 - VI. Federal waivers don't open up a tax year (section 17)**
 - A. once statute of limitations runs, department wont use opportunity of a federal waiver to open up a whole new audit
 - B. can still make changes that flow through from federal changes
 - C. can still enter into an agreement for waiver on the Ks. Level (often this is for taxpayer's convenience)
 - D. subsection (h) makes this change apply to pending appeals
 - VII. Direct sales tax refunds allowed (section 18)**
 - A. if paid tax directly to the department
 - B. retailer refused to file
 - C. if retailer did not file in a timely manner department can extend statute of limitations
 - D. during the course of an audit, can offset sales tax underpayments with direct refund of overpayments if consumer under audit is registered to remit sales tax.
 - VIII. Objective "good faith" standards set (sections 19 and 20)**
 - A. clear and objective determinations of when a retailer is "deemed" to have accepted an exemption certificate in good faith: (a) properly completed certificate, (b) vendor has ascertained the identity of the person presenting the certificate, (c) vendor has no knowledge that presentation by purchaser is improper
 - B. exceptions covered include resale, farm and statutorily exempted non-profit
 - C. section 20 penalties for misuse by consumers increased
 - D. sectio 20 should also clarify that all periods of an assessment made after 94 are subject to the reduced penalties set by the 94 legislature, regardless of whether some of the assessment's periods commenced prior to 94.
 - IX. Separating out interest from penalty on property tax (sections 21 - 29)**
 - A. allow for simple interest to be charged where penalties not appropriate.
 - B. retain penalty provisions where appropriate
 - C. allow interest on overpayments
 - X. Taxpayers' right to know (section 30)**
 - A. require counties to provide information on the amount of tax and on mill levy changes by taxing jurisdiction for all jurisdictions with mill levies greater than 5% of total mill levy.
 - XI. Clarification of limit on penalties on underpayment of estimated tax. (section 31)**
 - A. no penalty for underpayment of estimated tax if no return was required to be filed for the prior year or the liability for the prior year was less than \$200 for an individual or \$500 for a corporation.
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(f) Electricity, gas, fuel and water actually used by a hotel in rented rooms are exempt from sales tax. The exemption shall not apply to electricity, gas, fuel and water consumed in a hotel's common areas, parking lots, offices, swimming pools and other areas which are not rented by the hotel. When electricity, gas, fuel or water is furnished through one meter, the hotel shall furnish the utility a statement showing the electricity, gas, fuel or water actually used in the rented rooms of the hotel so the utility can determine the percentage of electricity, gas, fuel or water which is taxable. Each hotel shall make available to the department of revenue the formula and computations used to determine the exemption.

(g) Receipts received for the providing of laundry services, dry cleaning and valet services are taxable. When a hotel sends a consumer's clothing out to a third party cleaner, each hotel may purchase the cleaning exempt from sales tax for resale purposes, and shall include the charge and sales tax on the consumer's bill.

(h) Each hotel purchasing water, soap, solvents and other cleaning materials for the hotel's own use are subject to sales tax. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 64, Sec. 1 as further amended by Ch. 292, Sec. 32; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1987; amended May 1, 1988.)

92-19-25. (Authorized by K.S.A. 79-3609, 79-3610, 79-3611, 79-3618, K.S.A. 1971 Supp. 79-3602, 79-3603; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

92-19-25a. Exemption certificates. (a) All retail sales are presumed taxable unless specifically exempt. Each retailer shall be responsible for determining the validity of a purchaser's claim for exemption. In determining the validity of any claim for exemption, the retailer shall have a duty to make a reasonable and prudent inquiry of the purchaser regarding the item purchased and the basis for the exemption claimed. If the retailer determines the sale is not subject to tax, the retailer shall secure a completed exemption certificate from the purchaser. The certificate shall set out in detail the reason for the claim to exemption. Each retailer shall attempt to secure the exemp-

tion certificate either prior to billing the purchaser or prior to delivering the property. However, the retailer's responsibility for securing a certificate continues even though the purchaser may strike the tax from the billing or otherwise raises an exemption claim for the first time after receiving delivery or billing for the property. If the retailer does not obtain a proper exemption certificate, the retailer shall have the burden of proving the sale was exempt.

(b) The sale of services enumerated within the sales tax act are presumed to be taxable unless specifically exempt. When an enumerated service is claimed to be exempt, the person furnishing the service is required to obtain and maintain an exemption certificate in the same manner as a retailer of tangible personal property. If the retailer does not obtain a proper exemption certificate, the retailer shall have the burden of proving the sale was exempt.

(c) Each retailer shall keep a record of each exempt sale of property and services made during each calendar month, showing the date, amount, customer's name and address, item or service sold, and other pertinent information to support a claim for deduction taken on the monthly return. Each retailer shall make all exemption certificates available to the director of taxation for inspection. An exemption certificate shall be retained by the retailer for a period of not less than three years.

The director of taxation shall recognize an exemption certificate when in substantially the following form:

EXEMPTION CERTIFICATE

The undersigned purchaser certifies that the sale to him of tangible personal property or service by _____, of _____, Kansas, is exempt from the tax levied by the Kansas retailers' sales and compensating tax act for the following reasons: _____

The undersigned understands and agrees that if he uses the property or service other than as stated above or for any purpose which would not exempt the sale under the act, he becomes liable for the tax.

Date _____ Purchaser _____
(Signature)

Address _____

A retailer making recurring exempt sales of the same type to the same purchaser need not secure a separate exemption certificate for each transaction, but may accept, at the retailer's own risk, a

blanket exemption certificate covering future sales. If the retailer honors a blanket exemption certificate on a taxable sale, the retailer may be held responsible for the tax if the director determines the retailer knew or should have known the sale was not exempt. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3609, 79-3610, 79-3611, K.S.A. 1985 Supp. 79-3602, 79-3603 as amended by L. 1986, Ch. 386, Sec. 1; effective May 1, 1987.)

92-19-26. (Authorized by K.S.A. 79-3618, K.S.A. 1971 Supp. 79-3606; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; revoked May 1, 1987.)

92-19-27. (Authorized by K.S.A. 79-3608, K.S.A. 1973 Supp. 79-3602, 79-3618; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended Jan. 1, 1974; revoked May 1, 1987.)

92-19-27a. Sales for resale; Kansas resale exemption certificates. (a) Kansas sales tax is imposed upon retail sales only. Retail sales are sales to final users or consumers. If the retailer timely accepts a properly completed Kansas resale exemption certificate in good faith, the retailer shall be relieved of liability for sales tax or the duty to collect use tax. The retailer may accept a resale exemption certificate only from another retailer of tangible personal property who holds a valid Kansas retail sales or compensating (use) tax registration number.

(b) The director of taxation shall recognize a Kansas resale exemption certificate when in substantially the following form:

KANSAS RESALE EXEMPTION CERTIFICATE

(Name of purchaser)

(Address of purchaser)

I Hereby Certify: That I hold valid retailer registration No. _____ issued pursuant to the Kansas sales and compensating tax law; that I am engaged in the business of selling _____

That the tangible personal property described herein which I shall purchase from: _____

will be resold by me in the form of tangible personal property: Provided, however, That in the event any of such property is used for any purpose other than retention, demonstration, or display while holding it for sale in the regular course of business, it is understood that I am required by the Kansas sales and compensating tax law to report and pay tax, measured by the purchase price of such property. Description of property to be purchased: _____

Under "description of property to be purchased" there may appear an itemized list of the particular property to be purchased for resale, or a general description of the property to be purchased for resale. Each retailer accepting a resale exemption certificate containing a general description of resale property does so at the retailer's own risk and may be held liable for tax on sales when a particular item sold is not of the type normally resold in the purchaser's business. If a purchaser buys property for resale which is not of the type normally resold in the purchaser's business, the retailer shall require the purchaser to issue a specific resale exemption certificate containing a statement that the particular property is being purchased for resale in the normal course of the purchaser's business.

(c) A retailer shall be presumed to have taken a resale certificate in good faith in the absence of evidence to the contrary. Evidence that would overcome the presumption include:

- (1) A retailer's ongoing exemption of items that are not of the type normally resold in the course of the purchaser's business;
- (2) repeated failure of the retailer to obtain specific exemption certificates when warranted;
- (3) an active solicitation of resale exemption certificates which are improper; and
- (4) the honoring of certificates that do not contain a Kansas sales or compensating (use) retail registration number.

(d) Rules and regulations governing exemption certificates concerning bookkeeping duties, the timeliness of the retailer's request for a certificate, and the risks to the retailer in honoring a blanket exemption certificate for non-exempt taxable sales, shall also apply to Kansas resale exemption certificates. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3608, K.S.A. 1985 Supp. 79-3602; effective May 1, 1987.)

92-19-28. Motor carriers. Sales of tangible personal property or services to any motor carrier engaged in the transportation of persons or property in interstate common-carrier transportation are subject to the Kansas retailers' sales tax in the same manner as are sales to other firms, persons or corporations except as follows:

- a) Sales of rolling stock, including busses and trailers to each motor carrier qualifying as a public