

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 February 6, 1997 in Room 519-S of the Capitol.

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

Conferees appearing before the committee:

Others attending: See attached list

Chair called the meeting to order and opened for bill introductions.

Moved by Rep. Powell, seconded by Rep. Donovan, introduce a bill to broaden the definition of medical services to include optometrists and dentists in allowing property tax exemption for space provided. Motion carried.

Chair called on Rep. Powell to report on the findings of the Subcommittee on **HB 2105**.

HB 2105 - Kansas tax equity and fairness act of 1997

Rep. Powell reported the members of the subcommittee had prepared proposed amendments to **HB 2105**. (Attachment 1). Much discussion and suggestions on some further changes the tax committee members felt were needed. Fiscal note was distributed. (Attachment 2). Chair extended the time for possible amendments to be provided for committee action during the week of February 10 and possible action at that time.

The next meeting is scheduled for February 10, 1997.

Adjournment.

Attachments - 2

TAXATION COMMITTEE GUEST LIST

DATE: FEBRUARY 6, 1997

NAME	REPRESENTING
John Rief	Coffey County Treasurer
Joseph Walker	Linn County Treasurer
Mildred Meloy	Harpers Co Deputy Treasurer
Ray Hite	Woodson Co Treasurer
Crystal Solida	Clark Co Deputy Treas.
Carol Ann Brown	Treasurer
Becky Lips	Cowley Co Deputy Treas.
Dave McDonald	Cowley Co Treas.
Lana McDonald	Anderson Co Treasurer
Kathy Lambert	Grant Co Treasurer
Dorothy Johnson	Grant Co.
Cecilia Bennett	Holmes Co Treasurer
Nancy Weeks	Washell Co. Treasurer
Eileen King	Riley Co. Treas.
Janet Albert	Pratt Co. Treasurer
Gary Watson	Wago Co. Treasurer
MIKE BILLINGER	ELLIS CO. TREASURER
Bruce Swanwick	League of KS Municipalities
Brenda VanHuyne	University of Kansas student

TAXATION COMMITTEE GUEST LIST

DATE: Feb 6 1997

NAME	REPRESENTING
DONALD SNODGRASS	KANSAS FOOD DEALERS ASSN
Ashley Sherard	O.P. Chamber
Joyce Baker	Johnson County Court
Judy Molen	KAC
RICHARD BODEWALD	TAXPAYERS
Randy Allen	Ks. Assn. of Counties
Bob Corkins	KCCI
Harriet Lange	Ks Assn of Broadcasters
J. P. Small	KOCH INDUSTRIES, LEARJET
Bernie Koch	Wichita Area Chamber

STATE OF KANSAS



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Bill Graves
Governor

Gloria M. Timmer
Director

February 5, 1997

The Honorable Phill Kline, Chairperson
House Committee on Taxation
Statehouse, Room 170-W
Topeka, Kansas 66612

Dear Representative Kline:

SUBJECT: Fiscal Note for HB 2105 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2105 is respectfully submitted to your committee.

HB 2105 would establish the Kansas Tax Equity and Fairness Act of 1997. The bill contains several sections pertaining to interest rates on tax payments, notice requirements, and the appeals process. Major provisions of the bill are noted below:

1. Under current law, taxpayers must pay interest charged on delinquent or unpaid taxes that are levied or imposed by the State of Kansas. HB 2105 would also require the state to pay interest to taxpayers upon overpayment of tax levied or imposed, which would eventually be lowered through an appeal process. The bill also establishes the rate of interest that is to be paid. The rate is tied to the Internal Revenue Code and the "+1.0 percent" allowance is maintained.
2. The bill requires publication of all Department policies, includes private letters, in a medium that is readily accessible to taxpayers. Notice requirements in the *Kansas Register* are also referenced in HB 2105.
3. The bill eliminates the duplicative formal hearing process (Administrative Procedure Act) at the Department of Revenue. New language provides for an "informal

conference” with the Secretary of Revenue or the Secretary’s designee. Legal representation is not required. The Secretary has nine months to reach a final determination. Hearings before the Directors of Taxation or Property Valuation are eliminated. If the issues are not resolved, the bill provides for a formal appeal before the Board of Tax Appeals. Language specifies that these informal conferences would not “count” as adjudicative proceedings.

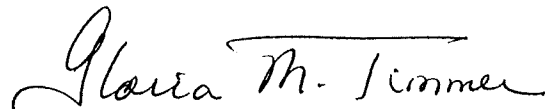
4. HB 2105 addresses requirements of the retailers’ sales tax act related to exemptions. Direct sales tax refunds are allowed if they are paid directly to the Department. If a retailer does not file in a timely manner, the Department can extend the statute of limitations. During the course of an audit, sales tax underpayments can be offset with direct refunds of overpayments, if the consumer who is being audited is registered to remit sales tax.
5. The bill outlines procedures that constitute "good faith" in the acceptance of an exemption certificate by a retailer. These include properly completed certificates, instances where a vendor has ascertained the identity of the person presenting the certificate, and the vendor has knowledge that the presentation by the purchaser is improper. There are exceptions, which are noted in the bill. The penalties for misuse by consumers are increased.
6. The bill allows taxpayers to use private delivery services to prove timely filings of tax returns, as does the federal government.
7. Provisions of the bill specify that tax auditors’ performance evaluations are not based on the amount of money the state receives from an audit.
8. Once the statute of limitations has run out, the Department of Revenue must not use the opportunity of a federal waiver to open up a new audit.
9. The authority to abate penalties and reduce interest on assessments for taxes lies with the Secretary of Revenue or the Secretary’s designee, rather than division directors. Sections of the bill separate interest from penalties on property tax. Simple interest may be charged where penalties are not appropriate. Interest is allowed on overpayments, and penalty provisions are retained where appropriate.
10. “Taxpayers Right to Know” requires 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 5.0 percent of the total mill levy.

11. The bill clarifies the limit on penalties on underpayment of estimated tax. No penalty can be assessed 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.

The Division of the Budget requested fiscal note information from the Department of Revenue and the Board of Tax Appeals. At the time that this fiscal note was prepared, only the Board of Tax Appeals had responded. This fiscal note may be revised if the Department of Revenue provides fiscal note information affecting state operations and state revenues.

The provisions of HB 2105 allow direct appeals from the taxpayer, over decisions made through informal hearings with the Secretary or the Secretary's designee, to the Board. Currently, the Board of Tax Appeals hears only those appeals from formal hearings. The Board estimates that it would see an increase in the number of filings, because of its assumption of appeals from the informal hearing process, of 8,000 hearings annually. This estimate of hearings is gathered from the Board's review of docketed cases handled by administrative law judges of the Department of Revenue, over a two-year period, and assumptions on those numbers that may be appealed to the Board of Tax Appeals. Thus, the Board of Tax Appeals estimates a State General Fund cost of \$135,000 for FY 1998 associated with HB 2105. This estimate includes \$120,000 for salaries and other operating expenditures for 3.0 new FTE positions (an attorney, a paralegal, and office assistant) and a temporary law clerk. Additionally, \$15,000 is estimated for one-time, start-up costs related to equipment and supplies.

Sincerely,



Gloria M. Timmer
Director of the Budget

cc: Lynn Robinson, Revenue
Rita Maichel, Tax Appeals

AMENDMENTS TO HB 2105

1. On page 16, strike lines 24 through 38 and insert the following:

New Sec. 19 (a) A vendor shall be presumed to have accepted an exemption certificate in good faith. Such presumption shall not be overcome if the vendor: (1) Maintains an exemption certificate or affidavit, as the case requires; (2) has ascertained the identity of the person or entity who presented the exemption certificate or affidavit; and (3) has not been shown by a preponderance of the evidence to have accepted the exemption certificate or affidavit with the intent to allow an unlawful evasion of the payment of tax by any person.

Change lettering of paragraphs accordingly.

2. On page 17, strike lines 27 through 41 and change lettering of paragraphs accordingly.
3. On page 34, at the end of Sec. 31, insert new section as follows:

New Section 32. In addition to any other rights and privileges provided by law regarding investigations of compliance with the provisions of the Kansas retailers' sales tax and Kansas compensating tax acts by a taxpayer, an investigated taxpayer shall be afforded the following rights and privileges:

(a) The opportunity to review documents and any other papers of the director of taxation or the authorized agents and employees of the director compiled as a result of any investigation into compliance with such acts at any time after completion of such investigation;

(b) the provision of a personal or telephonic conference conducted by the director or agent of the director with the taxpayer or a representative of the taxpayer after completion of an investigation of compliance with such acts, except that, if requested by the taxpayer, such conference shall be personal; and

(c) if the convenience of the taxpayer so dictates and upon request of the taxpayer, the investigation of compliance with such acts shall be conducted outside normal business hours, and in no event shall any such investigation conducted during normal business hours require the utilization of the time of the taxpayer or the taxpayer's agents in excess of 25% of such business hours corresponding with the duration of such investigation unless agreed to by the taxpayer.

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