

## MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:00 a.m. on March 25, 1997, in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Lee, Senator Bond, Senator Donovan, Senator Hardenburger, Senator Karr, Senator Praeger, Senator Steffes and Senator Steineger.

Committee staff present: Tom Severn, Legislative Research Department  
Chris Courtwright, Legislative Research Department  
Don Hayward, Revisor of Statutes  
Shirley Higgins, Secretary to the Committee

Conferees appearing before the committee: Mark Beshears, Sprint  
Ben Neill, Attorney at Law

Others attending: See attached list

The minutes of the meetings of March 19 and March 20 were approved.

Continued hearing on: **HB 2105--Enacting the Kansas tax equity and fairness act of 1997.**

Mark Beshears, Sprint, testified in support of **HB 2105**. (Attachment 1) He began by commending all who worked on the drafting of the bill. He felt the bill is the most comprehensive taxpayer fairness legislation that the Legislature has considered in many years. Mr. Beshears focused his comments on three key components of the bill as follows:

- (1) Informal hearing process. He believed the change from the current formal evidentiary hearing to an informal conference procedure constitutes the single most important change to streamline and make more efficient the tax appeals process in Kansas. Furthermore, the informal hearing procedure is a less costly appeal process for taxpayers and the Department of Revenue.
- (2) Equalization of interest rates. Interest rates for overpayments and underpayments are equalized under the bill as a matter of fairness that taxpayers be compensated for the time that the state has the taxpayers' money in its possession. The bill also provides a comprehensive solution to addressing the inequities in the property tax penalty and interest arena.
- (3) Good faith for exemption certificates. The bill is designed to provide a standard by which retailers can determine whether they have complied with the good faith standards for accepting sales tax exemption certificates. This provision relieves retailers from making judgment calls as to the validity of exemption certificates. The bill also enhances the penalties which would be imposed if a purchaser fraudulently submits an exemption certificate.

In regard to sales tax exemption certificates, Mr. Beshears suggested that **HB 2105** be amended on page two, lines 22 through 27, concerning the time requirement for retailers to submit exemption certificates not in their possession. The bill provides that the retailer be given 60 days to produce exemption certificates after receiving notice from the Director that such certificates are required. Mr. Beshears suggested that the 60 day time period begin when the exit conference is completed between the taxpayer and the Department.

Ben Neill, an attorney practicing law in Kansas City, testified in support of **HB 2105**. He noted that he was a former general counsel for the Department of Revenue. He addressed two provisions in the bill:

- (1) The elimination of the duplicative appeal process. It was his observation that, since the advent of the administrative procedure of the formal appeals process in the early '80s, there has been an unnecessary level of formal hearings in the appeal process. In his opinion, the only purpose served by the formal hearing process at the Director's level was an opportunity for someone from the Department of Revenue to abuse that process; therefore, the elimination of the formal hearing would remove that temptation.

CONTINUATION SHEET

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(2) The interest rate equalization for overpayment and underpayment. Mr. Neill felt the area of the bill most directed towards changing the attitude of the Department of Revenue to taxpayers was the portion dealing with interest rate equalization on refunds. Mr. Neill felt this provision would greatly improve the public's perception of the Department of Revenue and that it creates a friendlier attitude in resolving disputes.

There being no further conferees, the hearing on **HB 2105** was closed.

Senator Langworthy announced that the subcommittee on **HB 2105** would meet upon adjournment of the meeting.

The meeting was adjourned at 11:35 a.m.

The next meeting is scheduled for March 26, 1997.

SENATE ASSESSMENT & TAXATION COMMITTEE  
GUEST LIST

DATE: March 25, 1997

NAME	REPRESENTING
JOHN LAFARER	KDOR
MARK Beshears	Sprint
BEN NEILL	Attorney
Jimmy Allen	CPAK
Bob Brown	mid: Jim Lumbauer <i>off</i>
Julie Clark	Hallmark Cards
Bob Corkins	KCCI
Ken Peterson	KS Petroleum Council
GARY Robbins	Ks optometric Assn
Vernon Almet	Hallmark Cards, Inc.
MARK A. BURGHART	WESTERN ASSN.
ANTHONY M WHALEN	SPRINT
Ed Spiess	Peterson Public Affairs
DONALD Snodgrass	Ks FOOD DEALERS ASSOC.
HELBY Smith	—
Hal Hudson	NFIB/KS
Steve Blank	HUBBELL + ASSOC
Bill Anderson	Water Dist No 1 of Jo Co.
Rod Broberg	Kansas County Appraisers Assoc.



MEMORANDUM

TO: The Honorable Audrey Langworthy, Chairperson  
Senate Committee on Assessment and Taxation

FROM: Mark Beshears, Assistant Vice President  
State and Local Tax - Sprint

RE: House Bill 2105

DATE: March 25, 1997

Thank you for the opportunity to speak in support of House Bill 2105. The bill represents a coordinated effort between a Coalition of Taxpayers, the Department of Revenue and the Governor's Office to address a number of concerns regarding the perceived negative business climate in the State of Kansas. The provisions of the bill address specific deficiencies in the current system of handling tax appeals and addresses other taxpayer inequities. I would like to focus my testimony on three key components of the legislation.

Informal Hearing Process

The formal evidentiary hearing currently required to be conducted by the Director of Taxation in income and excise tax appeals is eliminated. An informal conference procedure is created in its place. The Secretary or Secretary's Designee would be responsible for conducting such informal conferences. The Department would have nine months in which to issue a final determination based on the results of the informal conference. This change would constitute the single most important change to streamline and make more efficient the tax appeals process in Kansas. The bill will eliminate years of legal wrangling in tax appeals and provide for a less-costly appeal process for taxpayers and the Department of Revenue. The new procedure will hopefully reduce or eliminate the confrontational formal hearing and replace it with a mechanism designed to achieve fair results in a much quicker less-costly fashion.

Equalization of Interest Rates

Interest rates for overpayments and underpayments are equalized under House Bill 2105. The interest rate under the original bill was the federal underpayment rate plus 1%. The House Committee Amendment reduced that rate to the underpayment rate minus 3%. Under the bill, interest would be required to be paid on all tax refunds including property and sales tax. It is a matter of fairness that taxpayers be compensated for the time that the state has the taxpayer's money in the state's possession. The

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*Attachment 1*

availability of refund interest will promote the quicker payment of refunds in sales tax cases.

There has been some debate as to whether a rate differential should exist for overpayments and underpayments. It has been suggested that the rate differential provided in Senate Bill 6 may be more appropriate in the context of property tax refunds. House Bill 2105 is superior to the provisions of Senate Bill 6. House Bill 2105, in addition to equalizing interest rates, also adjusts the penalties imposed in the personal property tax context. The penalty provisions for personal property tax are made consistent with those for sales and income taxes. Essentially, a 10% penalty would be imposed for late filing and payment and a 50% penalty would be imposed in circumstances involving fraud or intentional disregard of the tax filing requirements. House Bill 2105 provides a comprehensive solution to addressing the inequities in the property tax penalty and interest arena.

#### Good Faith for Exemption Certificates

House Bill 2105 also prescribes standards for determining when a retailer has accepted an exemption certificate in good faith. This has been an area of concern among certain retailers because the current standards do not clearly define good faith. Under the bill as originally introduced, a retailer is deemed to have accepted an exemption certificate in good faith if the retailer had an exemption certificate in its possession, the retailer had ascertained the identity of the person or entity presenting the exemption certificate and the vendor had no knowledge that the presentation of the certificate by the purchaser is otherwise improper.

The original language was a compromise position between members of the Taxpayer Coalition, the Department of Revenue and the Governor's Office. It is designed to provide a standard by which retailers can determine whether they have complied with the good faith standards for accepting exemption certificates. Retailers should not be the unpaid tax collectors for the state and be required to make numerous judgment calls as to the validity of exemption certificates. This bill addresses that concern. The bill also enhances the penalties which would be imposed if a purchaser fraudulently submits an exemption certificate. It is believed that these penalty provisions will continue to limit the amount of fraudulent exemption certificates which are submitted to retailers. That being the case, we do not envision a fiscal note of any significance on this issue.

I urge your favorable consideration of House Bill 2105. While the bill does not create any tax exemptions or make any tax rate reductions per se, it nevertheless is the most comprehensive taxpayer fairness legislation that the Legislature has considered in many years. The bill represents sound tax policy because it promotes fairness. I would be happy to respond to any questions you may have.