

Approved: Feb. 2, 2000
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE.

The meeting was called to order by Chairperson Wagle at 9:00 a.m. on January 20, 2000, in Room 519-S of the Capitol.

All members were present except: Rep. Wilk - excused
Rep. Howell - excused
Rep. Ray - excused
Rep. Long - excused
Rep. Edmonds - excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes
Shirley Sicilian, Director of Policy & Research, Department of Revenue
Ann Deitcher, Committee Secretary

Conferees appearing before the committee: Shirley Sicilian, Department of Revenue

The Chair explained that the meeting had been opened up to the public because of the concerns of people about the problems in the Department of Revenue regarding delinquent tax refund returns. She felt that the reason there was no one present in this regard was that, not only did these people hold down jobs, the distance to travel to be here was prohibitive.

She said she felt there were still questions to be answered by the Department of Revenue but Secretary Pierce had a previously scheduled meeting to attend and was unavailable.

Shirley Sicilian, Director of Policy and Research for the Department of Revenue, explained the three House Bills that were to be presented to the Committee. **(Attachment 1)**.

Ms. Sicilian pointed out the change in section 1. She also referred to the Performance Audit Report that was distributed to members of the Committee at the previous meeting. (Tuesday, January 18.)

Referring to Section 3 that deals with food sales tax credit, the Director said there were actually two suggestions for clarification. One of them, the extra head of household reduction credit, the interim Tax Committee has already taken up and there is already a bill on it. The other one is what will be dealt with. She said their suggestion was to eliminate the mandatory filing of group sales credit supporting documentation. (See page 36 of the Performance Audit Report.)

Representative Johnson asked if they were looking for introduction of a bill that would allow the department to accept income tax forms applying for the food sales tax credit, and not have to have the documentation with it when they mailed in their returns. He wanted to know what the next step was for the Department. Were they going to audit all those people who made a request or would they just audit a sampling of them to make sure they qualify.

The Director said they had no reason to target food sales tax violators so they would not audit them any more than any other area of people. They would simply apply the same compliance criteria to them as they do to any other filers applying for a credit.

Representative Campbell asked what the compliance criteria was.

Ms Sicilian said there were three special criteria. Over age 55 or have dependents under 18 years of age, or be blind or totally and permanently disabled. The other criteria is that your gross income is \$25 thousand or less. This is all on the form.

It was moved by Representative Johnston and seconded by Representative Sharp that an introduction of a

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bill be made that would address three of the four statutory clarifications suggested by the December, 1999 Legislative Post Audit. The motion passed on a voice vote.

The Chair asked a question regarding people who have moved or for some reason can not be located. Did the Director have any idea how much money this represented of unrefunded refunds. She requested they look into the undeliverables of taxpayers in 1998 that were supposed to be delivered in 1999 and then compare it to the year before that. The Director said she would do this.

Representative Gatewood said there were statutory requirements overlooked in the food tax. He wanted to know who's interpretation of the law was used when they developed the software. The Director told him it was the Revenue Department who had handled that. She said there was some confusion regarding the head of household exemption and that's why it became an interim study topic. The Interim Tax Committee did note in it's report that the Revenue Department's interpretation was the Legislative intent. They are now seeking a bill to clarify that Legislative intent. The fiscal note is zero because that was the intent in the first place.

Representative Minor said that in the past the Department had annually paid \$300 thousand in interest payments on refunds back to taxpayers and this last year the figure was over \$900 thousand. He asked what the projections were for the future. The Director said the projection was for much lower interest payments. She said they did have to take into account the change in the interest rate. Last year the amount of interest, almost a million of that, was really due to interest the Department paid on refunds from prior years.

Representative Gatewood asked how long the average call lasted. Ms Sicilian said that the calls do last longer now because, instead of the calls being rerouted, they go to the person who can actually solve the problem, thus they are on the phone longer.

Representative Campbell told of instances where there were a number of checks in one envelope that didn't all belong to the same person. The Director said this was the first she'd heard of this particular problem and she would look into it. The checks are stuffed into the envelopes by machine, but there are people who are overseeing this process.

The Chair suggested that the Committee individually give a list of their constituents' problems to those Revenue Department members who were present.

A bill regarding tax credits on FDA loans was introduced by Representative Campbell with a second by Representative Minor. The motion to introduce carried by a voice vote.

The meeting was adjourned at 10:30 a.m. The next meeting is scheduled for Tuesday, January 25, 2000.

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TESTIMONY

To: Representative Susan Wagel
Chair, House Taxation Committee
From: Shirley Sicilian
Re: Request for Introduction – LPA Suggested Clarifications
Date: January 20, 2000

Representative Wagel and members of the Committee, thank you very much for the opportunity to come before you today. We respectfully request introduction of a bill which would address three of the four statutory clarifications suggested by the December, 1999 Legislative Post Audit Report:

1. Clearly Allow an Automatic Extension. K.S.A. 79-3221(c) allows the director of taxation to grant an extension for filing tax returns. The statute also states that no penalty shall be imposed if 90% of the liability is paid on or before the original due date, whenever an extension is "requested by a taxpayer and granted by the director." The department has interpreted this statute to allow filing extensions and to prohibit the application of penalty where a taxpayer files 90% of liability is paid before the original due date. We apply penalty if less than 90% is paid. LPA pointed out in its audit (page 34) that we did not require the taxpayer to send us additional documentation requesting the extension. We believe that this additional request filing is not necessary to the extension process. For example, there are no statutory criteria upon which to deny a request. All requests would need to be granted. The substantive distinction by statute is really only whether 90% of the liability has been paid before the original due date or not. This is how the department is currently administering the statute and we request legislative clarification to continue this practice. The change would be a simple deletion: "Whenever any such extension of time to file is requested by a taxpayer and granted by the director ... no penalty ... shall be imposed if 90% of the liability is paid on or before the original due date."

2. Clarify the Calculation of Interest on Amended Returns. LPA noted in testimony that the statutes are currently silent on how interest should be calculated in the case of an amended return. (See also page 32 of the Audit). We do agree that the tax statutes provide limited guidance on interest payment for amended returns, and that to a large extent, whether our treatment of these cases is correct or not is a matter of statutory interpretation. For amended individual income tax returns, we apply interest back to the original payment date. We do believe that our interpretation is a reasonable one. Our view is that K.S.A. 79-32,105(e)(5) applies to late filings. An amended return is not the same as a late filing. In fact, amendments are usually made to timely filings. Thus, to the extent K.S.A. 79-32,105(e) applies to amended returns, the applicable section of would usually be subsection (6), dealing with timely filings, rather than

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subsection (5). Subsection (6) would require interest to be paid back to the date of overpayment, i.e. the original payment date¹.

Subsection (3) provides some evidence that our interpretation is reasonable. This subsection deems an overpayment due to a loss carryback to have been made in the year the loss carryback was applied for, rather than the year the loss is carried back to. Thus interest is not due back to the tax year being amended in the case of a loss carryback. There would not be a need for subsection (3) if subsection (5) dealing with late filings were interpreted to apply to amended returns. Similarly there is an explicit rule to the contrary for Corporate income tax. (K.S.A. 79, 32,140a). If the general rule in K.S.A. 79-32,105(e) were to be interpreted differently, there would be no need for the explicit contrary statement for Corporate income.

This interpretation would also affect the Department's 2 month grace period for processing refunds provided under K.S.A. 79-32,105(e)(7). Arguably, when an amended return is received more than 2 months after a timely filing, the 2 month grace period has expired, and interest would always be due.

This interpretation is consistent with sales tax treatment. Sales tax does not mention an "amended return." Rather, taxpayers that have overpaid on their original sales tax return file for a "refund." Also, the sales tax statutes disallow interest if the refund is paid "within 60 days after the date of the return or the date of payment..." Therefore, if the refund request is made more than 60 days after the original filing, the 60 day grace period has expired, and interest would be due no matter how fast we process the refund. This treatment is consistent with our current interpretation of the 2 month rule for income tax.

While we feel our current interpretation is the most supportable under current statute, we would strongly support statutory clarification that makes an explicit reference to amended returns for individual income tax.

3. Eliminate the Mandatory Filing of Food Sales Credit Supporting Documentation.

LPA also noted the current statutory requirement that proof of age or disability be supplied with the application for the food sales tax credit. (page 36 of LPA report referencing K.S.A. 79-3637). We believe this statutory requirement was simply overlooked when the food sales tax refund program was moved to become an income tax credit applied for on the income tax form. For example, the statute still references "household income" although the criteria is now Kansas Adjusted Gross Income. We believe that now that the food sales tax refund is an income tax credit, the better approach is to treat the application of this credit just as we do most other credits where compliance review is made post processing. To require this documentation with the return could result in seriously delayed food sales tax refunds for those who do not supply it. The department would feel we should contact these taxpayers and request the documentation, rather than just denying the credit. This would take time and delay food sales tax refund credits. We recommend amendments that would allow the secretary to request the supply of this documentation, rather than require it to be supplied with the return.

¹ (K.S.A. 79-32,105(e)(2)) states that the date of overpayment is "the last day pre-scribed for filing the return for the taxable year to which such amount constitutes a ... payment, determined without regard to extension ...". That would be the April 15 following the tax year for which the original payment was made.