Approved: February 18, 2000
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 16, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Secretary

Conferees appearing before the committee:
Lieutenant Governor Gary Sherrer, Secretary, Department of Commerce and Housing
Shirley Sicilian, Department of Revenue

Others attending: See attached list

Lt. Governor Gary Sherrer, Secretary, Department of Commerce and Housing (KDOC&H), introduced members of the Department's staff who gave brief reports of their divisions: Connie Fisher, Agriculture Products Development; Ned Webb, Community Development; Michael Farmer, Trade Development; Steve Kelly, Business Development and Randy Speaker, Housing.

Lt. Governor Sherrer informed the Committee that KDOC&H has met its annual performance goals, and in most cases has exceeded them. He explained the Kansas Economic Opportunity Initiatives Fund (KEOIF) loan process stating there have been $17 million in loans made the last 5 years with under approximately $390,000 in outstanding non-performing loans. Lt. Governor Sherrer stated the KEOIF program is one of the best economic development tools in place in Kansas. It is critical to the Kansas economy to maintain all of the programs presently in place to attract businesses and not to recruit only high tech companies. While "new economy" businesses of high tech nature are important, it is critical to maintain "old economy" businesses, particularly in small rural communities. KDOC&H sustained a 9% budget cut last fiscal year, making it more difficult to operate; however, 5,000 new jobs have been created with an increased payroll of $108 million and capital investment of $170 million. 23,000 persons have been trained through KDOC&H for 175 companies. Kansas has more persons working than ever before.

SB 521 - Enterprise Zone Act; eligibility for firms which construct or remodel only a portion of a business facility.

Lt. Governor Sherrer testified on behalf of **SB 521**, requested by the Business Development Division of KDOC&H. The bill would clarify the status of sales tax exemption for construction, reconstruction, remodeling, or enlarging qualifying leased property, when the property leased is less than the total facility. Currently, such property is eligible to receive a sales tax exemption, but the statutory language does not speak specifically to that eligibility or to a methodology(s) for the calculation of this exemption. This lack of clarity has led to confusion and misunderstandings which negatively impact the development of qualifying facilities in our state. **SB 521** prescribes two methods under which that portion of the facility and the corresponding construction costs would be apportioned for calculation of the sales tax exemption. (Attachment 1)

Shirley Sicilian, Policy and Research Division, Department of Revenue, agreed with the statement of the Lieutenant Governor and testified **SB 521** codifies current department policy. Ms. Sicilian testified that the current statutes allow for three different policy interpretations: no exemption, partial exemption, or 100% exemption.

Department of Revenue submitted a proposed amendment to **SB 521, as follows: On Page 2, on**

line 16 strike "~~the sales tax exemption may be claimed~~", and insert: "a project exemption certificate may be granted"; on line 19 strike "~~sale~~" and insert "sales". This proposed amended is made to clarify that the sales tax exemption is not automatically received, that an application for the exemption must be made and the exemption granted by the Department based on the information in the application. (Attachment 2).

The Revisor of Statutes questioned the intent of the amendment, stating the amendment, as worded, would nullify the ability of the taxpayer to select the formula for exemption purposes and would allow the Department of Revenue to make the decision.

Legislative Research Department distributed information on Sales Tax Exemption as it applies to the Kansas Enterprise Zone Act. (Attachment 3)

The Chair requested the following updated information from the Department of Commerce and Housing:

1. State economic development investment in rural areas; and
2. Incentives for needed housing development in med-size and smaller communities

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for February 17, 2000.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 16, 2000

NAME	REPRESENTING
Stephanie Buchanan	DOB.
Ivan Wyatt	Ks Farmers Union
Don Brenn	MID. America Credit Union Assn. (Cr. Ass.)
Terry Leatherman	KCCI
Christy A. Caldwell	
Roger Franzke	KGC
Mike Gurnee	Boeing
John Frederick	The Boeing Company

TESTIMONY TO:

SENATE COMMERCE COMMITTEE

SENATE BILL NO. 521

BY: STEVE KELLY

BUSINESS DEVELOPMENT DIVISION

KANSAS DEPARTMENT OF COMMERCE & HOUSING

Wednesday, February 16, 2000

Room 123-S

Senate Commerce Committee
Date: 2-16-00

Attachment # 1-1 thru 1-3

Testimony Before the Senate Commerce Committee

February 16, 2000

Madame Chair, Members of the Committee:

My name is Steve Kelly, I serve as the Director of Business Development for the Kansas Department of Commerce & Housing. I am here today to testify on behalf of Senate Bill No. 521, a provision, which would, if enacted, clarify the status of sales tax exemption for construction, reconstruction, remodeling, or enlarging qualifying leased property, when the property leased is less than the total facility.

The need for this amendment to K.S.A. 74-50 is brought to your committee in response to concerns brought to us by the business community. This in its simplest expression is an amendment, which would clarify the calculation and award of sales tax exemption for eligible property when there has been a commitment to a long-term lease by a tenant for a portion of the facility. Currently, such property is eligible to receive a sales tax exemption, but the statutory language does not speak specifically to that eligibility or to a methodology(s) for the calculation of this exemption. This lack of clarify has let to confusion and misunderstandings which negatively impact the development of qualifying facilities in our state.

As proposed, this amendment would insert language clarifying that the exemption is available for appropriate costs in facility, which will be leased *in whole or in part* for a minimum of five years. This measure, also, prescribes two methods under which that portion of the facility and the corresponding construction costs would be apportioned for calculation of the sales tax exemption, as follows: *(1) The total cost of constructing, reconstructing, remodeling or enlarging, the facility, multiplied by a fraction given by dividing the number of leased square feet eligible for the sales tax exemption by the total square feet being constructed, reconstructed,* *remodeled or enlarged,* i.e., the eligible leased portion divided by the total, or *(2) the actual cost of construction, reconstructing, remodeling, or enlarging that portion of the facility to be occupied by the eligible business.* The first method would be most applicable when an entire building or major portion of a building was undergoing some sort of construction/modification The second option would more likely be utilized when a specifically identified portion of a structure was undergoing modification for the tenant, or when costs of construction for a particular tenant substantially exceeded the average for the building because of special requirements or finish levels.

In our view, these proposed changes represent clarifying language which identifies more clearly the eligibility for the sales tax exemption and prescribe a method(s) for its calculation. We urge your support and positive action on this amendment.

Thank you for the opportunity to appear before the committee this morning.

MEMORANDUM

To: Mr. Duane Goossen, Director
Division of Budget

From: Kansas Department of Revenue

Date: 02/04/2000

Subject: Senate Bill 521
Introduced as a Senate Bill

Brief of Bill

Senate Bill 521, as Introduced, amends K.S.A 74-50,115 to enable a developer to apply and receive a project exemption certificate when only a portion of the building will be occupied by an eligible business or retail business. The proposal clarifies the qualifications for receiving a sales tax project exemption when a part or the entire facility is leased for a period of five years or more. The current statute has raised some interpretation issues which will be resolved by this proposal.

The bill would be effective July 1, 2000.

Fiscal Impact

The proposal will not affect state revenues. The proposal clarifies the extent of a sales tax project exemption when only a part of a facility is leased for a period of five years or more by a qualified business. The current language is not perfectly clear as to whether all of such a facility is exempt, none of it is exempt, or part of it is exempt. The proposal would clarify that only the part of a facility which will be leased by a qualified business is exempt.

Administrative Impact

None.

Administrative Problems and Comments

The following changes are suggested to the proposal. On page 2, line 16 replace "the sales tax exemption may be claimed" with "a project exemption certificate may be granted"... and on page 2, line 19 add an "s" to the "sale" to make it "sales." The suggestion is made to clarify that the sales tax exemption is not automatically received, that an application for the exemption must be made and the exemption granted by the department based on the information in the application.

Senate Commerce Committee
Date: 2-16-00

Attachment # 2

From: Kansas Inc., Sales Tax Exemption and Income Tax Credits Report, January 2000.

Appendix B

Recent History of Sales Tax Exemption as it Applies to the Kansas Enterprise Zone Act

1982: The Kansas Legislature established the Kansas Enterprise Zone Act, providing a city the ability to designate a portion of its area as an enterprise zone. Businesses which located within the zone would receive a sales tax refund on property and services associated with the construction, expansion, or rehabilitation of a business facility. In addition, job creation and investment tax credits were provided if a project created at least two net new jobs.

1986: Counties were given the authority to establish county enterprise zones.

1988: Sales tax on machinery and equipment used in manufacturing was made exempt. Prior to this, manufacturers had to be located in a designated enterprise zone to receive this exemption. Kansas had been the only state in the region with this tax.

1992: The Legislature enacted a new Kansas Enterprise Zone Act, which reconfigured the original program established pursuant to K.S.A. 12-17,107 et seq. Enterprise zones established in the earlier program were eliminated and enterprises zone incentives were extended statewide with enhanced levels of benefits in certain rural areas. In contrast to the earlier program, the revamped enterprise zone laws linked eligibility for sales tax exemption, investment tax credits, and job creation tax credits to the type of business and their ability to meet certain job creation qualifications.

1994: The Enterprise Zone Act was amended again to add a definition of "corporate headquarters" and to clarify the existing definitions of "non-manufacturing business" and retail business." This amendment was proposed by Kansas, Inc. to correct misinterpretations of the law which had resulted in the denial of enterprise zone benefits to many companies. The amendment also permitted owners of leased property to receive sales tax exemptions when constructing, reconstructing, remodeling, or enlarging a facility which will be leased for a period of five years or more to a business which would be eligible for the exemption if it had constructed, reconstructed, remodeled, or enlarged the facility itself.

1995: The Legislature repealed the 2.5% sales tax imposed in 1992 on labor used in original construction. This law became effective April 15, 1995.

1996: The Legislature amended the law to allow businesses to offset 100 percent of their Kansas income tax liability with E-Zone tax credits. It also included a definition for ancillary support facilities (back office operations), and headquarters which looks at the function the facility plays rather than the type of business the facility belongs to. The bill also amended the Act to allow insurance companies and financial institutions, which pay privilege tax, to be eligible for job expansion and investment tax credits.

Senate Commerce Committee
Date: 2-16-00

Attachment # 3-1 thru 3-2

Summary of Kansas Enterprise Zone Incentives

Eligibility for the various incentives and the value of the incentive depend on 1) the type of business, 2) the location of the business within the state, and 3) the number of net new jobs created. The *Kansas Enterprise Zone Act* defines the six counties of Douglas, Johnson, Leavenworth, Sedgwick, Shawnee, and Wyandotte as metropolitan counties. As such, they are ineligible to apply for the enhanced job credits available to designated non-metropolitan counties.

Jobs Criteria/Definitions	***Basic Incentives***	***Desig. Non-metro Regions***
Manufacturing A manufacturing business is defined as any commercial enterprise identified under Standard Industrial Classification (SIC) codes, major groups 20-39 and must create a minimum of two (2) net new jobs.	Manufacturing **Sales Tax Exemption** **Job Creation Tax Credit** - $1,500 per net new job. **Investment Tax Credit** - $1,000 per $100,000 of qualified business facility investment.	Manufacturing **Sales Tax Exemption** **Job Creation Tax Credit** - $2,500 per net new job. **Investment Tax Credit** - $1,000 per $100,000 of qualified business facility investment.
Non-Manufacturing A non-manufacturing business means any commercial enterprise other than a manufacturing or retail business that creates a minimum of five (5) net new jobs or the business headquarters of an enterprise or the ancillary support facility of an enterprise if the facility creates at least 20 new full-time positions.	Non-Manufacturing **Sales Tax Exemption** **Job Creation Tax Credit** - $1,500 per net new job. **Investment Tax Credit** - $1,000 per $100,000 of qualified business facility investment.	Non-Manufacturing **Sales Tax Exemption** **Job Creation Tax Credit** - $2,500 per net new job. **Investment Tax Credit** - $1,000 per $100,000 of qualified business facility investment.
Retail A retail business is defined as any business providing goods or services taxable under the Kansas Retailers' Sales Tax Act; any professional service provider set forth in K.S.A. 17-2707, and amendments thereto; any bank, S&L, or other lending institution; any commercial enterprise whose primary business activity includes the sale of insurance; any commercial enterprise deriving its revenues directly from noncommercial customers in exchange for personal services such as, but not limited to barber shops, photographic studios, and funeral services. Retail businesses must create a minimum of two (2) net new jobs.	Retail **Sales Tax Exemption** - Available for businesses in communities of less than 2,500 population **Job Creation Tax Credit** - $100/year for 10 years for each net new job created (K.S.A. 1995 Supp. 79-32,153. **Investment Tax Credit** - $100/year for 10 years for each $100,000 in qualified business investment (K.S.A. 1995 Supp. 79-32,153.	Retail **Sales Tax Exemption** - Available for businesses in communities of less than 2,500 population **Job Creation Tax Credit** - $100/year for 10 years for each net new job created (K.S.A. 1995 Supp. 79-32,153. **Investment Tax Credit** - $100/year for 10 years for each $100,000 in qualified business investment (K.S.A. 1995 Supp. 79-32,153.