

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:50 a.m. on January 23, 2001, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Richard Cram, Kansas Department of Revenue
Duane Goossen, Director of the Budget

Others attending: See attached list.

The minutes of the January 22, 2001, meeting were approved.

Richard Cram, Kansas Department of Revenue, requested the introduction of two bills on a conceptual basis. Both bills relate to the Streamlined Sales Tax Project. The first bill would provide for lengthening the notice period that local taxing jurisdictions must provide the Department before a local sales tax rate or boundary change can take effect. The second bill would authorize the Department to enter an agreement with other states for uniformity in sales and use tax administration when the legislative changes needed to join that agreement are accomplished.

Senator Donovan moved to recommend the introduction of both conceptual bills as requested by Mr. Cram, seconded by Senator Praeger. The motion carried.

Mr. Cram discussed the following bills which were introduced at the request of the Department of Revenue: **SB 40, SB 41, SB 42, SB 43, SB 44, and SB 45.** (Attachment 1)

SB 40—Sales taxation; concerning the administration thereof.

Mr. Cram explained that **SB 40** proposes to amend K.S.A. 79-3611 to expressly grant the Secretary of Revenue the power to issue subpoenas in sales tax matters to compel taxpayers to produce records and testify concerning sales tax liability issues. He noted that the Secretary already has subpoena powers for income tax investigations and has the same need to subpoena persons and records in sales tax investigations. Granting the Secretary subpoena power would give the Department a means to gain cooperation in producing records needed for an adequate sales tax audit without having to resort to an injunction, jeopardy assessment, or estimated assessment. If the subpoena is ignored, the bill would give the Secretary authority to seek an order to compel production from the district court.

Mr. Cram stated that he questioned the accuracy of the fiscal note (\$40,000.00) on the bill prepared by the Division of the Budget. He felt that perhaps the fiscal note was hastily prepared without adequate information from the Department. In his opinion, the cost will be minimal, and the fiscal note may be revised.

Senator Clark asked if the Secretary can currently request a court to compel the production of sales tax records. Mr. Cram said, under the current statute, the Department could argue that it could go to court and get an order to compel; however, the law is not clear. Following further discussion, Senator Corbin continued the hearing on **SB 40** to allow time to gather more information on the Department's authority to seek orders to compel with regard to the production of sales tax records.

SB 41—Amending the Kansas Estate Tax Act; concerning the expiration of inheritance tax liability.

Mr. Cram explained that **SB 41** would abolish any liability for Kansas inheritance tax as of July 1, 2008, for those estates for which no return has been filed by that date. He explained that the inheritance tax applies only to estates of persons dying before July 1, 1998. He noted that the continued existence of potential inheritance tax liability after July 1, 2008, could create clouds on titles. He said the Department does not attribute any significant fiscal impact to the proposal because it anticipates that the vast majority of estates of persons dying before July 1, 1998, would file returns before July 1, 2008.

SB 42—Relating to the liquor drink tax; concerning periods of limitations.

Mr. Cram explained that **SB 42** would amend K.S.A. 79-41a03 to add a statute of limitations to the liquor drink tax. He said adding the statute of limitations will help create certainty for both the Department and the taxpayer. He noted that the statute of limitations provision shown in the bill is taken from the sales tax act.

Senator Corbin informed the Committee that Philip Bradley, Kansas Licensed Beverage Association, could not attend the meeting but called to express support for **SB 42**.

SB 43—Relating to appeals concerning food sales tax refunds.

Mr. Cram explained that **SB 43** amends K.S.A. 79-3639 to provide that appeals of the Department's denials of food sales tax refund claims will go through the Department's informal conference process applicable to income tax appeals instead of going straight to the Board of Tax Appeals. He noted that food sales tax refunds are often denied because the Department received insufficient information from the claimant. If appeals of denials of these claims would first go through the Department's informal conference process, the Department and the claimant will have the opportunity to resolve information issues without going to the Board of Tax Appeals.

SB 44—Amending the Homestead Property Tax Refund Act; concerning the administration thereof.

Mr. Cram discussed the three sections of the bill. Section 1 proposes to amend K.S.A. 79-4501 so that the unnecessary language describing unmarried widows is deleted. Section 2 proposes to amend K.S.A. 2000 Supp. 79-4504 to authorize the Department to pay homestead property tax refunds from the income tax refund fund instead of from funds appropriated by the Legislature, thus eliminating the problem of delayed refunds. Section 3 amends K.S.A. 79-4521 to codify the way the Department currently administers the "refund advancement program." Mr. Cram explained that Section 3 would clarify that certificates of eligibility must come from the Department and that the county clerk cannot independently issue certificates to anyone.

Duane A. Goossen, Director of the Budget, testified in support of **SB 44**. He explained that the bill changes homestead property tax refunds from expenditures to deductions from revenue, enacting one of the provisions of the Governor's budget. (Attachment 2)

SB 45—Income taxation; concerning periods of limitations.

Mr. Cram explained that **SB 45** amends K.S.A. 79-3230, the statute of limitations applicable to assessments and refunds of income tax. He discussed the current provisions found in paragraph (a), paragraph (c), and paragraph (f) of the statute and explained the proposed amendments to each paragraph.

The meeting was adjourned at 11:50 a.m.

The next meeting is scheduled for January 24, 2001.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: January 23, 2001

NAME	REPRESENTING
Richard Aam	KDOR
Ann Dukes	DOB
Dyane Gossett	DOB
Marsha Jean Smith	KMHA
Kathy Olsen	KBA
Godd Johnson	KLA
John Peterson	Anteuser Busch
Frances Kastner	Ka Food Dealers assn
Tom Palace	PNCA OF KS
Julie Heia	Hem + Weir
George Peterson	KTA
Alex Kobyantze	KS Academy of Science
Mallee Carpenter	KCEI
Kelly Kuetala	City of Overland Park
John Fredewik	Boeing
Karl Peterzina	KS Taxpayers Network

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Office of Policy & Research

To: Senator David Corbin, Chair
Senate Assessment and Taxation Committee

From: Richard L. Cram

Re: Testimony Supporting Senate Bills 40, 41, 42, 43, 44 and 45

Date: January 23, 2001

Senate Bill 40:

Senate Bill 40 proposes to amend K.S.A. 79-3611 to expressly grant the Secretary of Revenue the power to issue subpoenas in sales tax matters to compel taxpayers to produce records and testify concerning sales tax liability issues. K.S.A. 79-3611 currently authorizes the director of taxation to examine taxpayer records, hold investigations and hearings concerning sales tax liability issues, and require attendance of persons. However, subpoena power is not expressly mentioned. The Secretary of Revenue already has subpoena powers for income tax investigations. K.S.A. 79-3233. The Secretary has the same need to subpoena persons and records in sales tax investigations as in income tax investigations.

Retailers subject to collection, reporting and remittance of sales tax are required to maintain certain books and records and make those available to the Department's audit staff for inspection during business hours. K.S.A. 79-3609(a). Recently, the Department's auditors have encountered a few taxpayers who do not cooperate, even after repeated requests to make their records available. The Department cannot complete an accurate audit without the records. A taxpayer failing to produce the requested records violates K.S.A. 79-3609(a). At this point, the Department has three options: (1) seek an injunction in court pursuant to K.S.A. 79-3630 to shut down the business for violating the sales tax laws; (2) issue a jeopardy assessment against the taxpayer pursuant to K.S.A. 79-3610, if there is reason to believe that the taxpayer is about to depart the state, remove or conceal assets, or otherwise prejudice collection efforts; or (3) issue an estimated assessment against the taxpayer, based on the available records.

Injunction is a drastic, costly and time-consuming remedy, reserved for the extraordinary situation. Depending on the circumstances, evidence that a retailer failed to produce requested records, by itself, may not be enough to establish sufficient factual grounds for a jeopardy assessment. If the Department issues an estimated assessment based on incomplete or no

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records, then the retailer's lack of cooperation in the audit may actually enhance the retailer's chances of defending against such an assessment.

Granting the Secretary subpoena power would give the Department a means to gain cooperation in producing records needed for an adequate sales tax audit, without having to resort to an injunction, jeopardy assessment, or estimated assessment. If the subpoena is ignored, Senate Bill 40 would give the Secretary authority to seek an order to compel production from the district court.

Senate Bill 41:

Senate Bill 41 seeks to abolish any liability for the Kansas inheritance tax as of July 1, 2008, for those estates for which no return has been filed by that date. Inheritance tax applies only to estates of persons dying before July 1, 1998. K.S.A. 79-15,119. In 1998, the legislature adopted the Kansas estate tax act, which applies to estates of persons dying on or after July 1, 1998. The Kansas estate tax act provides for a "pick-up" tax, based on the credit set forth in federal estate tax laws, section 2011 of the internal revenue code.

The Estate Tax Advisory Committee of the Kansas Judicial Council has advised that if the Department did not propose this legislation, they would do so next year. The continued existence of potential inheritance tax liability after July 1, 2008 could create clouds on titles. The statute of limitations for inheritance tax does not begin to run until a return is filed. For an estate that never files a return, the statute of limitations will never begin to run, let alone expire. However, the statutory tax lien for inheritance liability under K.S.A. 79-1569 will expire ten years following the date of death. Thus, for those estates subject to inheritance tax (persons dying before July 1, 1998), the tax lien will expire by June 30, 2008. After that date, the Department's ability to collect any outstanding inheritance tax liability would be very limited.

Inheritance tax is due at the expiration of nine months after the date of death, and interest accrues thereafter. K.S.A. 79-1564. The Department anticipates that the vast majority of estates of persons dying before July 1, 1998 would file returns (if required) before July 1, 2008. Therefore, the Department does not attribute any significant fiscal impact to this proposal. As discussed above, for any estate filing after June 30, 2008, expiration of the tax lien by that date would limit the Department's ability to collect the tax, in any event.

Senate Bill 42:

Senate Bill 42 proposes to amend K.S.A. 79-41a03 to add a statute of limitations to the liquor drink tax. No statute of limitations is currently contained in the liquor drink tax act. Adding the statute of limitations will help create certainty for both the Department and the taxpayer. The liquor drink tax is imposed on 10% of the gross receipts received for the sale of alcoholic liquor by any club, caterer, drinking establishment or temporary permit holder. K.S.A. 79-41a02. It is reportable and payable to the Department at the same time that retailers' sales tax would be reported and paid (although it must be kept track of separately).

The statute of limitations provision shown in Senate Bill 42 is taken from the sales tax act, K.S.A. 79-3609. It provides that assessments must be made within three years after the return is filed, except in cases as fraud, when the assessment must be made within two years after the fraud is discovered. Refund claims must be filed within three years from the date of payment.

Also, Senate Bill 42 provides that prior to the statute of limitations otherwise expiring, the director of taxation and the taxpayer are authorized to enter into an agreement voluntarily extending the time for assessments or refunds. This provision greatly facilitates the Department's audit staff when additional information has to be obtained from the taxpayer before an assessment can be finalized or refund claim processed.

Senate Bill 43:

Senate Bill 43 amends K.S.A. 79-3639 to provide that appeals of the Department's denials of food sales tax refund claims will go through the Department's informal conference process applicable to income tax appeals, instead of going straight to the Board of Tax Appeals.

Food sales tax refund claims are filed as part of an individual's income tax return. Under current law, an income tax liability dispute must proceed through the Department's informal conference process before the right to appeal to the Board of Tax Appeals exists. Because the food sales tax refund claim is included in the income tax return, it is much more efficient for a food sales tax issue and income tax issue to both proceed through the Department's informal conference process simultaneously.

Often, food sales tax refund claims are denied because the Department received insufficient information from the claimant to process the refund claim. Appeals of these denials then clutter the docket of the Board of Tax Appeals, when those appeals could possibly be easily resolved if the Department had received the additional information needed. If appeals of denials of these claims would first go through to the Department's informal conference process, the Department and the claimant will have the opportunity to resolve information issues before the matter goes to the Board of Tax Appeals. This should help reduce the number of appeals going on to the Board of Tax Appeals to those involving substantive issues.

Senate Bill 44:

Section 1 of Senate Bill 44 proposes to amend K.S.A. 79-4501, so that (a) and (b) are combined, and the unnecessary language describing unmarried widows is deleted. One of the criteria for qualifying for the homestead property tax refund is being age 55 or over. Qualification does not depend on sex or marital status.

Section 2 proposes to amend K.S.A. 2000 Supp. 79-4504 to authorize the Department to pay homestead property tax refunds out of the income tax refund fund, instead of from funds appropriated by the legislature for these refunds. Under current law, the Department provides an estimate each year of the amount needed to pay homestead property tax refund claims anticipated to be received in the coming fiscal year. This estimate is used in determining the legislature's appropriation. Each year, the number of homestead property tax refund claims and the amounts of the refunds increase. The Department has consistently underestimated the amounts needed to pay these refunds. For the past few years, the funds appropriated for these refunds have become exhausted by late spring, before all of the claims are paid. The Department must seek supplemental funding before the balance of the claims can be paid, causing complaints and delays in payment. The Department expects this same scenario to occur this year. Section 2 would eliminate this recurring problem.

Section 3 amends K.S.A. 79-4521 to codify the way that the Department has currently been administering the "refund advancement program." Under this program, a qualifying homeowner who has filed a homestead property tax refund claim and received a refund for the prior year is eligible in the next year to take advantage of the refund advancement program. For example, if the homeowner filed a 1999 homestead property tax refund claim by April 15, 2000 for tax year 1999, was found to qualify for the refund and received it, then in November 2000, the Department would send a Form ELG (certificate of eligibility) to the homeowner. This form would enable the homeowner to use the anticipated tax year 2000 homestead property tax refund to apply toward payment of the homeowner's first half of property taxes due in December 2000. The homeowner would take this form to the county clerk to complete and submit to the county treasurer. The completed form indicates that the person qualifies for the homestead property tax refund and is using the expected refund for tax year 2000 (or some portion of it) to pay the first half of property taxes. The county treasurer collects the forms (certificates) and sends them to the Department, which in turn advances funds to the county treasurer to apply to the first half of property taxes for the homeowners submitting completed certificates. Later, when the homeowner files the tax year 2000 return in April 2001 with the homestead claim, the Department will deduct from the 2000 homestead property tax refund any advance made and applied to the first half of property taxes due in December 2000.

In a few situations, persons who have not previously filed homestead property tax refund claims and who have not received the Form ELG's from the Department, have applied to the county clerk for certificates of eligibility, in order to take advantage of the refund advancement program. However, the determination of whether an individual qualifies for the homestead property tax refund should be based on the factual information provided to the Department in the K-40H claim form, which specifically solicits the needed information (Kansas residency for entire year, minimum age, disability, dependent under 18 living with, maximum household income level). County clerks typically would not be equipped to handle the detailed factual inquiries needed to make correct homestead qualification determinations. If the county clerk makes an incorrect determination that someone qualifies, then the Department will have paid funds to the county that should not have been advanced.

Section 3 would clarify that the Form ELG's (certificates of eligibility) must come from the Department, because the Department should make the eligibility determination, based on the prior year homestead property tax refund claim that was filed by the homeowner. The county clerk cannot independently make that determination or issue those certificates to anyone. If the Department is the only entity making the homestead property tax refund qualification determination, the same standards should be applied and the process should be more uniform. Otherwise, each county clerk may apply different standards.

Senate Bill 45:

Senate Bill 45 proposes to amend K.S.A. 79-3230, the statute of limitations applicable to assessments and refunds of income tax. Paragraph (a) currently provides that the Department must assess income tax within three years after the return was filed or the tax was paid, whichever is later. The Department has interpreted the word "return" to mean the "original return." However, when an amended return is filed near the end of the three-year period, the Department has little, if any time to review the amended return before the statute of limitations expires. Senate Bill 45 would amend paragraph (a) to provide that the Department must assess within three years after the original return is filed, the tax is paid, or within one year after an amended return is filed, whichever of those three events occurs latest.

Paragraph (c) currently provides that an income tax refund must be claimed within three years after the date prescribed by law for filing the return, if filed before that date, or if filed after the due date, within three years of the actual filing date or the payment of tax, whichever is later. Both the Department and taxpayers have been confused by this provision. Recently, the Department unsuccessfully argued to the Board of Tax Appeals that (c) required a different statute of limitations, depending whether the return was filed on time or not. The Board of Tax Appeals interpreted (c) to provide that a refund claim is timely if filed within two years after the tax was paid, regardless of whether original or amended returns were filed. Senate Bill 45 proposes to amend (c) to conform with the Board of Tax Appeals' interpretation. Some of the language in Senate Bill 45 amending (c) is modeled after the federal income tax statute of limitations for refunds, I.R.C. § 6511.

Senate Bill 45 also proposes to amend paragraph (f), which is a separate statute of limitations applicable to an amended return filed as result of the Internal Revenue Service having adjusted a taxpayer's federal return (known as a federal "revenue agent report" or "RAR"). The adjustment to federal income will often cause an accompanying change to the Kansas income. A taxpayer may not receive a federal RAR until several years after the statutes of limitations under 79-3230(a) and (c) have already expired. Paragraph (f) currently provides that once the RAR has been issued, the taxpayer has 180 days to file an amended return reporting the RAR to the Department. After that amended return is filed, the Department has 180 days to assess and the taxpayer has that same time period to claim a refund attributable to that RAR. As previously mentioned, the Board of Tax Appeals has interpreted the statute of limitations to provide that a taxpayer always has two years from the payment of tax to claim a refund. Senate Bill 45 proposes to amend (f) to provide that when the taxpayer has paid additional tax as a result of an RAR, the Department has two years to assess and the taxpayer has two years to claim a refund attributable to the RAR.



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Bill Graves
Governor

Duane A. Goossen
Director

MEMORANDUM

TO: Senate Committee on Assessment and Taxation
FROM: Duane A. Goossen, Director of the Budget
DATE: January 23, 2001
SUBJECT: Senate Bill 44

Mr. Chairman, Members of the Committee:

SB 44 changes Homestead property tax refunds from expenditures to deductions from revenue, enacting one of the provisions of the Governor's budget.

Currently, refunds are treated as an expenditure with money appropriated from the State General Fund. In FY 2001 the Governor's budget includes a recommendation of \$15.1 million for Homestead refunds. However, for FY 2002 the Governor proposes that refunds simply be paid as they become due with the cost subtracted from income tax proceeds. This switch does not change tax policy but does lower both expenditures and projected revenues in the state budget by an equal amount.

In the past, when appropriations for the refunds have been inadequate, they have gone unpaid until the next fiscal year. SB 44 eliminates the problem of delayed refunds.

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