

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:50 a.m. on February 6, 2002, 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

Others attending: See attached list.

The minutes of the February 4, 2002, meeting were approved.

Senator Corbin requested the re-introduction of a bill introduced in the 2001 Session concerning the participation by the Department of Revenue in the Streamlined Sales Tax Project, **SB 252**, with an added provision authorizing more people to attend the Streamlined Sales Tax meetings. Both the majority and minority leadership of the Senate and the House would be authorized to appoint a person to the committee. He noted that other states have involved many more people on the secondary committee. Participants believe that the more people learn about the project, the better.

Senator Praeger moved to re-introduce **SB 252** as requested by Senator Corbin, seconded by Senator Donovan. The motion carried.

Senator Corbin requested the introduction of a bill dealing with all terrain vehicles (ATVs). The bill would provide that owners of ATVs must show proof of payment of property tax before they can purchase a registration sticker for the ATV.

Senator Donovan moved to introduce the bill as proposed by Senator Corbin, seconded by Senator Goodwin. The motion carried.

Senator Jenkins moved to introduce a bill which would require state withholding on all non-resident distributions from partnerships, LLCs, and Subchapter S corporations, seconded by Senator Clark. The motion carried.

Senator Jenkins moved to introduce a bill which would require state withholding on prize money from professional athletes participating in Kansas based sporting events, seconded by Senator Lee. The motion carried.

**SB 413—Setoff of taxpayer refunds against liabilities**

Richard Cram, Kansas Department of Revenue, testified in support of **SB 413**. He explained that, because taxes are treated as a personal debt of the taxpayer, they are subject to the common law right of setoff. When a taxpayer owes tax on one type of tax but has overpaid a tax of another type, the Department exercises its common law right of setoff by applying the taxpayer's refund to the tax liability. Section 1 of the bill would codify the Department's common law right to setoff. Section 2 would make a "clean up" correction to K.S.A. 79-2015 by simply replacing references to the "director of revenue" to "secretary." Sections 3 and 4 amend K.S.A. 79-32, 104 and 105 so that they will be consistent with Section 2. Mr. Cram noted that the bill needs to be corrected on page 1, line 31, by striking "Provided, That." (Attachment 1)

Committee questions followed at which time Senator Clark noted that perhaps "director" should be changed to "secretary" in Section 4, line 33. Mr. Cram agreed. In addition, Mr. Cram acknowledged that the Department's use of the common law right of setoff has not been challenged since the Department made the decision to begin to use it in 1998 in connection with Project 2000. He explained that the Department's

## CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:50 a.m. on February 6, 2002, in Room 519-S of the Capitol.

philosophy is that, in the interest of clarity, it is better to rely on statute than common law doctrine. With this, the hearing on **SB 413** was closed.

### **SB 414—Penalties; sand and gravel royalties**

Mr. Cram noted that, pursuant to K.S.A. 70a-106, the state owns the mineral rights and the right to natural products within the state's river beds. Under K.S.A. 2001 Supp. 70a-102, any person who desires to take sand, gravel, oil, gas, minerals, hay, timber, or other natural products from a river bed must obtain consent from the Director of Taxation. With respect to river sand and gravel, lessees must pay the state compensation, and they must file returns with specific information regarding the material withdrawn. Mr. Cram explained that K.S.A. 70a-108 provides general criminal penalties for violation of Chapter 70a; however, no civil penalties are specified for failure to file returns, late filing, late payments, or failure to make prescribed payments. **SB 414** would add new civil penalty and interest provisions regarding payments for sand, gravel, or other natural products removed from river beds. Mr. Cram requested that the bill be amended on line 34, subsection 1(c), to delete "(a)(1)," which does not need to be referenced because it does not contain a penalty provision. (Attachment 2) The hearing on **SB 414** was closed.

### **SB 415—Payment of tax liability by electronic funds transfer**

Mr. Cram noted that over half of the total monthly revenue payments received by the Department are made by electronic funds transfers, and payment by this method greatly enhances the state's cash flow situation because the funds are received immediately. Mr. Cram further noted that the Secretary of Revenue is authorized to require a taxpayer whose total sales tax or withholding tax liability exceeds \$100,000 in a calendar year to remit payments by electronic funds transfer. Under current statute, even if the Secretary has notified the taxpayer that remittance by electronic funds transfer is required, the taxpayer will not be subject to any penalty for continuing to pay by check and failing to pay by electronic funds transfer as long as the Department receives the payment by the due date. Mr. Cram went on to explain that the Department has experienced difficulty in obtaining compliance from approximately 20 large corporate taxpayers, most of which greatly exceed the \$100,000 threshold. He reasoned that, without a penalty provision, violators have little incentive to comply with the requirement to pay by electronic funds transfer. **SB 415** would add a penalty provision to K.S.A. 75-5151 for failure to pay by electronic funds transfer following notification to do so, even if payment by check would otherwise be considered timely. (Attachment 3) The hearing on **SB 415** was closed.

### **SB 424—Abatement of drug taxes**

Mr. Cram explained that the Secretary has authority to abate or compromise uncollectible liabilities for a variety of taxes, but has no authority to abate or compromise drug taxes. As of December 31, 2001, the Department has accrued \$110,162,183.51 in outstanding drug tax assessments since the drug tax was enacted in 1987. The Department estimates that 90 percent is uncollectible due to the fact that many times assessed taxpayers are incarcerated or otherwise lack good collection prospects. Because collection of these assessments is almost nonexistent, the amount of the Department's accounts receivable is artificially inflated and thus inaccurate. In the rare instance wherein it may be possible to obtain at least a partial voluntary payment from the taxpayer, the Secretary cannot compromise the drug tax assessment. If the Secretary is given the authority to abate or compromise drug tax assessments, uncollectible drug tax assessments can be written off and removed from the Department's accounts receivable balance, greatly increasing the accuracy. In addition, the Department's ability to collect voluntary drug tax payments will be enhanced. **SB 424** amends K.S.A. 2001 Supp. 75-5154 by adding a reference to K.S.A. 79-5201, marijuana and controlled substances tax, to the types of taxes that can be abated or compromised by the Secretary or the Secretary's designee. (Attachment 4) The hearing on **SB 424** was closed.

The meeting was adjourned at 11:45 a.m.

The next meeting is scheduled for February 7, 2002.



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Office of Policy & Research

February 6, 2002

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

From: Richard Cram

Re: Department of Revenue Testimony in Support of Senate Bill 413

Background

"Setoff" means the right which exists between two parties, each of whom is indebted to the other, to apply debts to one another by mutual reduction so that everything but the difference between the two is extinguished. *Brown v. Lobdell*, 585 P.2d 4, Syl. 1 (Or.App.1978). The common law right of setoff is generally available to government as well as private citizens. 585 P.2d at 7. See *United States v. Munsey Trust Co.*, 332 U.S. 234, 239 (1946) (applying federal government's right of setoff). K.S.A. 79-2015 provides: "taxes, fees, interest and penalties, levied and assessed by any state law administered by the director of revenue may be collected in the same manner as a personal debt of the taxpayer to the state of Kansas from the time same shall become due." Because taxes are treated as a personal debt of the taxpayer, they are subject to the common law right of setoff.

In situations involving a taxpayer owing tax of one type (sales tax, for example), but overpaying tax of another type (income tax, for example), the Department exercises its common law right of setoff by applying the taxpayer's liability for one tax-type against the taxpayer's refund for another tax-type. In doing so, the Department provides written notice to the taxpayer of the setoff, so that the taxpayer has the opportunity to bring to the Department's attention any error regarding the setoff.

K.S.A. 79-32,104 provides a statutory setoff mechanism for estimated income tax overpayments, stating that they will be considered credits against any other income tax liability owed by the taxpayer. The Department can apply any estimated income tax overpayments to any other income tax liability of the taxpayer.

K.S.A. 75-6201 *et seq.* establishes a statutory setoff procedure administered by the Department of Administration, which any state agency, certain foreign state agencies, or any municipality can use to seek to apply a payment owed a debtor to an obligation the debtor may owe to that agency or municipality. This procedure is "in addition to and not in substitution for any other remedy available by law." K.S.A. 79-6203(a).

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Attachment 1

## Explanation and Purpose of Senate Bill 413

With this proposal, the Department seeks codification of its common law right to setoff a taxpayer's liability for one type of tax against the taxpayer's overpayment of another type of tax. Section 1 of Senate Bill 413 adds the following new provision:

*If the amount of any tax payments, estimated or otherwise, made during any calendar year or other taxable period exceeds the taxpayer's liability for which such payments were made, any excess shall be applied to any other tax then owed the state of Kansas by such taxpayer, including fines, penalties and interests, if any, and the balance of such excess, if any, refunded to the taxpayer.*

This provision expresses the Department's common law right to setoff a taxpayer's overpayment of one type of tax against the taxpayer's liability for another tax type.

Section 2 makes a "clean-up" correction to K.S.A. 79-2015, simply replacing references to the "director of revenue" in K.S.A. 79-2015 to "secretary."

Sections 3 and 4 amend K.S.A. 79-32,104 and K.S.A. 79-32,105 respectively, so that they will be consistent with Section 2, above. Those two statutes currently set forth the statutory procedure for setoff of an overpayment of estimated income tax against any other income tax liability of the taxpayer. They would be amended to expressly provide that overpayments of estimated income tax will first be applied to any other tax liability, with the balance remaining available for refund or credit.

A typographical error needs to be corrected at page 1, line 31 of the bill. The words "Provided, That" should be stricken. Attached hereto is a copy of the bill showing the recommended correction.

**SENATE BILL No. 413**

By Committee on Assessment and Taxation

1-23

AN ACT relating to taxation; concerning the setoff of taxpayer refunds against liabilities; amending K.S.A. 79-2015 and 79-32,104 and K.S.A. 2001 Supp. 79-32,105 and repealing existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. If the amount of any tax payment, estimated or otherwise, made during any calendar year or other taxable period exceeds the taxpayer's liability for which such payment was made, any excess shall be applied to any other tax then owed the state of Kansas by such taxpayer, including fines, penalties and interests, if any, and the balance of such excess, if any, shall be refunded to the taxpayer.

Sec. 2. K.S.A. 79-2015 is hereby amended to read as follows: 79-2015. The taxes, fees, interest and penalties, levied and assessed by any state law administered by the ~~director~~ *secretary* of revenue may be collected in the same manner as a personal debt of the taxpayer to the state of Kansas from the time *the* same shall become due, and shall be recoverable in any court of competent jurisdiction in any action in the name of the state of Kansas, on relation of the ~~director~~ *secretary* of revenue *or the secretary's designee*. Such suit may be maintained, prosecuted, and all proceedings taken to the same effect and extent as for the enforcement of a right of action for debt. All provisional remedies available in such actions shall be, and are hereby made available to the state of Kansas in the enforcement of the payment of any state tax. ~~Provided, That, except that~~ the remedy herein provided shall be in addition to the various warrant and lien procedures now provided by law for the collection of delinquent taxes.

Sec. 3. K.S.A. 79-32,104 is hereby amended to read as follows: 79-32,104. (a) The amount paid upon declarations of estimated tax under this act during any calendar year shall be allowed as a credit against the income tax otherwise imposed on the taxpayer by the "Kansas income tax act."

(b) If the amount paid on the declaration of estimated tax during any calendar year exceeds the income tax liability of the taxpayer, any excess shall be applied to any other ~~income~~ tax then owed the state of Kansas by such taxpayer ~~{including fines, penalties and interest, if any}~~, *as pro-*

1 *vided by section 1, and amendments thereto*, and the balance of such  
 2 excess, if any, refunded to the taxpayer as provided in K.S.A. 79-32,105  
 3 *(c), and amendments thereto*, or at the taxpayer's option credited to ~~his~~  
 4 ~~or her~~ *the taxpayer's* declaration of estimated tax liability for the suc-  
 5 ceeding year.

6 Sec. 4. K.S.A. 2001 Supp. 79-32,105 is hereby amended to read as  
 7 follows: 79-32,105. (a) The director shall remit the entire amount col-  
 8 lected under the provisions of this act and from the income tax imposed  
 9 upon individuals, corporations, estates or trusts pursuant to the "Kansas  
 10 income tax act" less amounts withheld as provided in subsection (b) and  
 11 any amounts credited to the IMPACT program repayment fund or the  
 12 IMPACT program services fund under K.S.A. 74-50,107 and amend-  
 13 ments thereto to the state treasurer in accordance with the provisions of  
 14 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
 15 remittance, the state treasurer shall deposit the entire amount in the state  
 16 treasury to the credit of the state general fund.

17 (b) A revolving fund, designated as "income tax refund fund" not to  
 18 exceed \$4,000,000 shall be set apart and maintained by the director from  
 19 income tax collections, withholding tax collections, and estimated tax col-  
 20 lections and held by the state treasurer for prompt payment of all income  
 21 tax refunds, for the payment of interest as provided in subsection (e), for  
 22 payment of homestead property tax refunds in accordance with the home-  
 23 stead property tax refund act and for payment of property tax refunds  
 24 allowed pursuant to the provisions of K.S.A. 2001 Supp. 79-255, and  
 25 amendments thereto. The fund shall be in such amount, within the limit  
 26 set by this section, as the director determines is necessary to meet current  
 27 refunding requirements under this act.

28 (c) If the director discovers from the examination of the return, or  
 29 upon claim duly filed by the taxpayer or upon final judgment of the court  
 30 that the income tax, withholding tax, declaration of estimated tax or any  
 31 penalty or interest paid by or credited to any taxpayer is in excess of the  
 32 amount legally due *for such tax or any other tax owed the state of Kansas*,  
 33 the director shall certify to the director of accounts and reports the name  
 34 of the taxpayer, the amount of refund and such other information as the  
 35 director may require. Upon receipt of such certification the director of  
 36 accounts and reports shall issue a warrant on the state treasurer for the  
 37 payment to the taxpayer out of the fund provided in subsection (b), except  
 38 that no refund shall be made for a sum less than \$5, but such amount  
 39 may be claimed by the taxpayer as a credit against the taxpayer's tax  
 40 liability in the taxpayer's next succeeding taxable year.

41 (d) When a resident taxpayer dies, and the director determines that  
 42 a refund is due the claimant not in excess of \$100, the director shall certify  
 43 to the director of accounts and reports the name and address of the

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Office of Policy & Research

February 6, 2002

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

From: Richard Cram

Re: Department of Revenue Testimony in Support of Senate Bill 414

Background

Pursuant to K.S.A. 70a-106, the bed and channel of any river in the state (including islands and sand bars), in general, is considered property of the state. K.S.A. 2001 Supp. 70a-102 requires any person desiring to take sand, gravel, oil, gas or minerals, hay or timber from any river bed, to obtain the consent of the director of taxation, upon such terms as the director determines. With respect to river sand, K.S.A. 2001 Supp. 70a-102 provides that the rate of compensation to be paid the state will be \$.15 per ton taken (unless it is to be used exclusively for a person's own domestic use). Pursuant to K.A.R. 92-9-6a, lessees are required to file returns with the director of taxation by the 15th day of each month, stating the amount of material withdrawn, returned, stored and sold, and the name of the person(s) to whom the material was sold during the preceding month. Lessees are required to maintain this information for a period of two years. The Department currently receives 7 monthly sand and gravel returns representing 25 sand plants conducting sand or gravel removal operations at various locations in the state. The Department also administers approximately 20 oil and gas leases.

K.S.A. 70a-108 provides general criminal penalties (misdemeanor, including fine of \$25 to \$1000 and/or imprisonment up to six months) for violation of Chapter 70a. However, no civil penalties are specified for failure to file returns, late filing, failure to make the prescribed payments, or late payment. Also, the current law does not require interest accrual on late payments. The Department has at least one sand and gravel lessee who is consistently several months late with the required monthly payments. Civil penalty and interest provisions are needed to provide the Department the needed civil enforcement measures to administer the agreements for sand and gravel, or other product, removal from river beds, to ensure prompt filing of returns and payment of compensation, as required by law.

Although the compensation payments described in K.S.A. 2001 Supp. 70a-102 are not taxes, the Department believes, for consistency sake and as a matter of good administrative practice, civil penalty and interest provisions should be prescribed, similar to those applicable to the taxes administered by the Department.

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Attachment 2



## Explanation and Purpose of Senate Bill 414

Senate Bill 414 would add new civil penalty and interest provisions to Chapter 70a of the Kansas Statutes Annotated, dealing with payments for sand and gravel, or other natural products removed from river beds.

Subsection 1(a)(1) imposes interest at the rate per month prescribed in K.S.A. 79-2968(a) (which prescribes the interest rate applicable to income tax, sales tax, and other miscellaneous taxes administered by the Department) on compensation payments from the date due until paid, if the late payment is not negligent or intentional. If the payment is late because of negligence or intentional disregard, but not because of fraud, subsection 1(a)(2) imposes a penalty of 10% of the amount due, plus interest. If the payment is not made because of fraud, Section 1(a)(3) imposes a penalty of 50% of the amount due, plus interest.

Subsection 1(b) imposes a penalty for failure to file a return of \$25 per day. Under subsection 1(c), the director of taxation may waive penalties, if the failure to file or make payment was due to reasonable cause.

Subsection 1(d) expressly provides that failure to file a return or pay the compensation, making a false or fraudulent return, willfully violating any rules and regulations administering K.S.A. 70a-101 et seq., or aiding and abetting evasion of payment of such compensation, are subject to the criminal penalties prescribed at K.S.A. 70a-108.

Subsection 1(e) provides that the director's final determinations of liability under K.S.A. 70a-101 et seq. are subject to the administrative appeals process set forth in K.S.A. 79-3226, applicable to income taxes.

The Department requests that Senate Bill 414 be amended at Line 34, subsection 1(c), to delete "a(1)." Subsection 1(c) provides the director of taxation authority to waive the penalties prescribed in subsections 1(a)(1), (a)(2) and (b) for reasonable cause, but subsection 1(a)(1) does not contain any penalty provision, so it need not be referenced in the penalty waiver provision. Attached hereto is the proposed amendment to Senate Bill 414.

## SENATE BILL No. 414

By Committee on Assessment and Taxation

1-23

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AN ACT relating to sand and gravel; concerning penalties relating to the taking thereof.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. (a) If any compensation required by K.S.A. 70a-102, and amendments thereto, is determined by the director to be unpaid: (1) Not due to negligence or to intentional disregard of this act or rules and regulations promulgated by the secretary, interest on such compensation shall be added at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid; (2) due to negligence or to intentional disregard of this act or rules and regulations promulgated by the secretary, but without intent to defraud, a penalty of 10% of the amount of such compensation shall be added, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid; (3) due to fraud with intent to evade the compensation, there shall be added thereto a penalty of 50% of the amount of such compensation, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid.

(b) If any person fails or refuses to make any return, when required to do so under the provisions of K.S.A. 70a-101 *et seq.*, and amendments thereto, such person shall be subject to a penalty of \$25 per day for each return which such person fails or refuses to file.

(c) Whenever, in the judgment of the director, the failure of any person to comply with the provisions of subsection ~~(a)(1)~~, (a)(2), and (b) of this section, was due to reasonable cause, the director may, in the exercise of discretion, waive or reduce any of the penalties upon making a record of the reason therefor.

(d) In addition to all other penalties provided by this section, any person who: (1) Fails to make a return, or to pay any compensation required to be paid as required by K.S.A. 70a-101 *et seq.*, and amendments thereto; or (2) makes a false or fraudulent return, or fails to keep any books or records prescribed by K.S.A. 70a-101 *et seq.*, and amendments thereto; or (3) willfully violates any rules and regulations promulgated by

1 the secretary for the enforcement and administration of K.S.A. 70a-101  
2 *et seq.*, and amendments thereto; or (4) aids and abets another in at-  
3 tempting to evade the payment of any compensation required to be paid,  
4 shall be subject to the penalty prescribed for other violations by K.S.A.  
5 70a-108, and amendments thereto.

6 (e) The director of taxation shall examine all returns filed under the  
7 provision of K.S.A. 70a-101 *et seq.*, and amendments thereto, and shall  
8 issue notices and final determinations of liability hereunder in the manner  
9 prescribed by K.S.A. 79-3226, and amendments thereto, relating to in-  
10 come taxes.

11 Sec. 2. This act shall take effect and be in force from and after its  
12 publication in the statute book.

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Office of Policy & Research

February 6, 2002

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

From: Richard Cram

Re: Department of Revenue Testimony in Support of Senate Bill 415

Background

Over half of the total amount of revenue payments received by the Department per month are made by electronic funds transfers. Payment by electronic funds transfer greatly benefits the state, because the funds are received immediately. The delays experienced (often amounting to several days) in receiving checks by mail, opening the mail and retrieving the checks, depositing them, and waiting for the checks to clear can be avoided with electronic funds transfers. K.S.A. 75-5151 authorizes the Secretary of Revenue to require a taxpayer whose total sales tax liability or withholding tax liability exceeds \$100,000 in any calendar year to remit payments by electronic funds transfer. The funds must be available to the state on or before the due date for the tax. The current statute provides:

Failure to timely make such payment in immediately available funds or failure to provide such evidence of payment in a timely manner shall subject the taxpayer to penalty and interest as provided by law for delinquent or deficient tax payments.

Under the Department's reading of this provision, even if the Secretary has notified the taxpayer that remittance by electronic funds transfer is required, the taxpayer will not be subject to any penalties for failure to pay by electronic funds transfer, even if the taxpayer continues to pay by check, so long as the Department has received the check in time for the funds to be available to the state by the due date for the tax. Only if the payment by check results in the funds not being available until after the due date for the tax will penalties apply. Those penalties are set forth at K.S.A. 2001 Supp. 79-3228 (income tax) and 79-3615 (sales tax). For taxable years ending after December 31, 2001, late payment penalties are 1% of the unpaid balance due for each month (or fraction thereof) that the payment is late, not exceeding 24% in the aggregate.

In addition to being received instantly, payments by electronic funds transfers are processed much more efficiently, quickly and accurately. They greatly enhance the state's cash flow situation. Taxpayers need to be encouraged, to the fullest extent possible, to make payment by electronic funds transfer. However, the Department has experienced difficulty with approximately 20 large corporate taxpayers, most of them greatly exceeding the \$100,000 sales or withholding tax liability threshold, in obtaining compliance with the requirement to remit by

Senate Assessment & Taxation  
2-6-02 Attachment 3

electronic funds transfer. K.S.A. 75-5151 lacks any penalty provision for failure to remit payment electronically following notification to do so, so long as the taxpayer makes the funds available to the state by the due date for the tax. Without a penalty provision, violators have little incentive to comply with the requirement to pay by electronic funds transfer. A provision needs to be added to K.S.A. 75-5151 to penalize the taxpayer for failure to pay by electronic funds transfer following notification to do so, even if payment by check would otherwise be considered timely.

#### Explanation and Purpose of Senate Bill 415

Senate Bill 415 would amend K.S.A. 75-5151 to add the following provision:

*At any time after the secretary of revenue has given a taxpayer written notice that payment of tax liability by electronic funds transfer is required, then timely payment by any method other than electronic funds transfer shall be considered delinquent and subject to penalty and interest as if made no earlier than one day following the due date for such payment.*

Addition of this penalty provision to K.S.A. 75-5151 would enable the Department to penalize taxpayers meeting the \$100,000 sales or withholding tax liability threshold who refuse to remit electronically, even when payment by check would otherwise be considered timely. Such a payment would be treated as if received one day late. For taxable years 2002 and thereafter, this would trigger a penalty of 1% of the amount due, plus one day of interest on that amount.

This change to K.S.A. 75-5151 should enable the Department to significantly increase taxpayer compliance with the existing statutory requirement to remit tax by electronic funds transfer, following notification from the Secretary. This, in turn, will enhance the state's cash flow situation and increase the Department's efficiency in accurately processing and depositing payments.

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Office of Policy & Research

February 6, 2002

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

From: Richard Cram

Re: Department of Revenue Testimony in Support of Senate Bill 424

Background

Under current law, the Secretary of Revenue (or Secretary's Designee) has authority to abate uncollectible liabilities for a variety of different taxes, pursuant to the procedures set forth at K.S.A. 79-3233a through 79-3233i. These include the following taxes: individual and corporate income, sales and use (K.S.A. 2001 Supp. 79-3618[b]), cigarettes and tobacco products, motor vehicle fuel, LP-gas motor fuel, interstate motor fuel, liquor enforcement, liquor drink, liquor gallonage, and transient guest. K.S.A. 2001 Supp. 75-5154.

K.S.A. 79-3233a authorizes a taxpayer to petition the Secretary or Secretary's Designee for a compromise of tax liability, upon proof of insolvency. K.S.A. 79-3233g authorizes the Director of Taxation to petition the Board of Tax Appeals for abatement of tax liability when the liability is shown to be uncollectible, under the circumstances set forth at K.S.A. 79-3233i (such as statute of limitations, insolvency, incapacity, lack of jurisdiction, etc.).

A large number of drug tax assessments are delinquent and are unlikely to ever be collected. As of December 31, 2001, the Department currently has \$110,162,183.51 in outstanding drug tax assessments and estimates that 90% of this amount is uncollectible. This balance has been accruing since the drug tax was enacted in 1987. Most has been outstanding for several years. Many times, assessed taxpayers are incarcerated or otherwise lack good collection prospects. Because the Secretary currently lacks authority to abate or compromise drug taxes imposed under K.S.A. 79-5201 *et seq.*, the Department must continue to include outstanding drug tax assessments in its accounts receivable, making that number inaccurate and artificially inflated, even though the likelihood of ever collecting anything on most of these assessments is practically nonexistent. In addition, in the rare situation where it may be possible to obtain at least some payment from the taxpayer voluntarily, the Secretary lacks any authority to compromise the drug tax assessment. Thus, the taxpayer lacks any incentive to make even a partial payment of a drug tax assessment. The ability to compromise or settle an outstanding tax liability under appropriate circumstances provides the Department with a very powerful collection tool.

Senate Assessment & Taxation  
2-6-02  
Attachment 4

Were the Secretary to be given authority to compromise or abate drug tax assessments, the large amount of outstanding uncollectible drug tax assessments could be written off and removed from the Department's accounts receivable balance, greatly increasing its accuracy. In addition, the Department's ability to collect voluntarily on outstanding drug tax assessments will be enhanced.

Explanation and Purpose of Senate Bill 424

Senate Bill 424 amends K.S.A. 2001 Supp. 75-5154 by adding a reference to K.S.A 79-5201, marijuana and controlled substances tax, to the types of taxes that can be abated or compromised by the Secretary of Revenue or the Secretary's Designee. The proposal would provide a method to abate uncollectible drug taxes from the Department's accounts receivable. The proposal will also enhance the Department's collection efforts by enabling the Department to collect drug taxes voluntarily through settlement offers, under appropriate circumstances.