

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:40 a.m. on February 17, 2003, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Joan Wagon, Acting Secretary, Department of Revenue
Richard Cram, Department of Revenue
Gary Anderson, Attorney at Law
Lew Ebert, Kansas Chamber of Commerce and Industry
Bob Watson, Overland Park City Attorney

Others attending: See attached list.

Senator Corbin called the Committee's attention to the minutes of the February 13 and 14 meetings. Senator Taddiken moved to approve the minutes of the February 13 and 14, 2003, meetings, seconded by Senator Buhler. The motion carried.

SB 192—Enacting the streamlined sales and use tax agreement conformity act

Acting Secretary of the Kansas Department of Revenue, Joan Wagon, and Richard Cram, Kansas Department of Revenue, presented joint testimony in support of **SB 192**. Secretary Wagon began by noting that the bill contains changes in the Kansas sales tax law which are necessary to meet the uniformity and simplification requirements set forth in the Streamlined Sales and Use Tax Agreement adopted by the implementing states on November 12, 2002. She pointed out that the effective date of the bill is July 1, 2004, to allow the Kansas Legislature the opportunity to observe whether Congress acts this fall to authorize states to require remote retailers to collect use tax on Internet and catalog sales. Mr. Cram began a joint explanation of the provisions of the bill by subject areas as follows:

- Uniform Definitions – Section 4
- State Administration of All Local Sales Taxes – Sections 29 through 40
- Uniform State and Local Sales Tax Bases – Sections 5 and 6
- Local Use Tax – Section 2
- Use Tax on Services – Sections 2 and 11
- Seller Registration – Section 8
- Notices to Retailers of Tax Rate, Effective Date, and Taxing Jurisdiction Boundary Changes – Sections 1, 12, and 24
- Database for Rate and Boundary Changes – Sections 13 and 14
- Sourcing Rules – Sections 1, 15-19
- Administration of Exemptions – Section 10
- Uniform Returns – Section 7
- Electronic Remittances – Section 3
- Uniform Bad Debt Recovery Rules – Section 20
- Confidentiality and Privacy Protections – Section 21
- Uniform Rounding Rules – Section 22
- Customer Refund Procedures – Section 9
- Taxability Matrix – Section 23
- Seller Participation – Section 25
- Amnesty for Registration – Section 26
- Method of Remittance – Section 27
- Registration by an Agent – Section 8

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:40 a.m. on February 17, 2003, in Room 519-S of the Capitol.

In conclusion, Secretary Wagnon noted that the Agreement requires that member states provide monetary compensation to certified service providers. However, the compensation terms are the subject of contractual negotiations and will be determined at some point in the future. Therefore, **SB 192** does not contain compensation provisions. (Attachment 1)

As they discussed each section, both Mr. Cram and Secretary Wagnon responded to questions raised by Committee members. Mr. Cram explained that the Department will have technical amendments to the bill.

Senator Corbin commented that the best explanation he was given for the need for the streamlined sales and use tax was that our commerce has changed since the sales tax laws were adopted in the 1930s. We have moved into the computer age which is similar to the era of industrialization in the early 1900s. Consequently, there is a need for a new, more uniform way to collect the same tax under a different situation.

Gary Anderson, an attorney with the law firm of Gilmore & Bell, testified in support of **SB192** on behalf of the Unified Government of Wyandotte County and the City of Olathe. He clarified that he supports the bill with certain modifications to the Transportation Development District (TDD) provisions, a new section regarding reporting of sales tax information for Transportation Development Districts, Tax Increment Financing (TIF) projects, and certain effective dates of portions of the bill. He explained that his office has been working with the Attorney General's office on technical amendments to the TDD Act adopted in the 2002 Legislative Session. Because the TDD Act is current law in Kansas and is not a policy decision with respect to the streamlined sales tax, he suggested the TDD portion be removed from the bill and placed in a separate bill. If the TDD Act provisions remain within the streamlined sales tax, he suggested that the provisions relating to transportation districts and the reporting of sales, use, and transient guest taxes be effective July 1, 2003, instead of July 1, 2004, for the remainder of **SB 192**. (Attachment 2)

Lew Ebert, Kansas Chamber of Commerce and Industry, testified in strong support of **SB 192**. He noted that simplification in the area of collecting and remitting sales tax will benefit both large and small retailers, and the streamlined system will increase compliance with existing sales tax laws, bringing in increased revenue to the state. Furthermore, Kansas retailers will be on a level playing field with vendors that do not have nexus in the state and are not required to collect sales tax. Mr. Ebert also supports the enactment of vendor allowance for remote retailers but recommended, as a matter of fairness, that Kansas retailers also be compensated. (Attachment 3)

Bob Watson, Overland Park City Attorney, testified in support of two particular sections of **SB 192**, Section 2 pertaining to application of the local compensating use tax to purchases in other participating states of all tangible personal property and certain services and New Section 34 pertaining to collection by the State Director of Taxation of transportation development district excise taxes in return for 2 percent of the tax revenues collected from the district. (Attachment 4)

There being insufficient time to hear remaining conferees, Senator Corbin continued the hearing on **SB 192** to February 18.

The meeting was adjourned at 11:55 a.m.

The next meeting is scheduled for February 18, 2003.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: February 17, 2003

NAME	REPRESENTING
Low Ebert	KCCI
Tom Palace	PMCA OF KANSAS
Hale Hudson	NFIB/KS
Danielle Nee	Johnson County
Martha Jean Smith	KS Mfg. Working Assn
Chris Wilson	KS Building Industry Ass'n
Ron Appleoft	WaterOne
Bill Brady	Ks Gov't Consulting
GARY ANDERSON	Gilmore & Bell, P.C. ✓
Steve Johnson	Kansas Gas Service
Fam Scott	Ks Funeral Directors Assn
Ron Seiber	Hein Law Firm
John J. Jurek	Boeing
Andy Shaw	Kearney & Assoc. Inc
Leslie Kaufman	Ks Farm Bureau
Stuart Little	Westar
Deann Williams	Kmca
Ryan Ringelman	Dawson
Ann Burkes	TOB



K A N S A S

JOAN WAGNON, ACTING SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony to Senate Assessment and Taxation
Joan Wagon
Acting Secretary of Revenue

February 17, 2003

Testimony in Support of Senate Bill 192

Chairman Corbin and members of the Committee:

Senate Bill 192 contains the changes needed to be made to Kansas sales tax law, in order to meet the uniformity and simplification requirements set forth in the Streamlined Sales and Use Tax Agreement (Agreement) adopted by the Implementing States (including Kansas) on November 12, 2002. The Agreement will become effective and operational once at least 10 states with at least 20% of the population in all states imposing sales tax join the Agreement. A state cannot become a Member of the Agreement until it's laws meet the uniformity and simplification requirements. The effective date of the changes proposed in Senate Bill 192 is July 1, 2004 (with a few exceptions to be explained later). Although this will prevent Kansas from becoming a Member State of the Agreement any sooner than July 1, 2004, the Legislature would have the opportunity to observe whether Congress acts this fall to authorize states to require remote retailers to collect use tax on Internet and catalog sales, before the uniformity and simplicity provisions in Senate Bill 192 become effective. If Kansas wants to be one of the initial states joining the Agreement, then the effective date would need to be earlier.

Provisions of Senate Bill 192

The provisions of Senate Bill 192 are described below, by subject area.

Uniform Definitions—Section 4

The Agreement requires that if a state's sales tax laws use certain terms, or if those terms fall within a state's sales tax impositions or exemptions, then the definitions of those terms contained in the Agreement must be adopted. Senate Bill 192 adds several new definitions to Kansas sales tax law. The following terms are added, not because they are required definitions, but because they are terms frequently used within the Agreement (and also within the Senate Bill 192 provisions), and for clarity sake need to be defined. These include: agent, certified automated system, certified service provider, model 1 seller, model 2 seller, model 3 seller, purchaser, registered under this agreement, seller, sourcing rules, agreement, and member state. The following terms are uniform definitions required by the Agreement to be adopted in Kansas: delivery charges, direct mail, lease or rental, purchase price, retail sale (differs slightly from

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Senate Assessment & Taxation

2-17-03

Attachment 1

current Kansas definition), sales or selling price, computer, computer software (differs from current Kansas definition), delivered electronically, electronic, load and leave, prewritten computer software, tangible personal property (differs slightly from current Kansas definition), alcoholic beverages, food and food ingredients, tobacco, drug (differs from current definition), durable medical equipment (differs from current Kansas definition of "medical equipment"), mobility enhancing equipment, prescription, and prosthetic device (differs from current Kansas definition).

Most of the above definitions are consistent with current Kansas law. Some differences arise. Under Kansas law, tangible personal property is defined to include computer software (both custom and canned) and prepaid telephone calling cards. The Agreement treats custom software as a service and defines canned software as tangible personal property. The Agreement also defines prepaid calling cards as a service. Changes to Kansas law are made to conform to the Agreement definitions. See Section 5, p. 16, lines 23-34; p. 17, lines 1-9.

Adoption of the Agreement definition for "drug" requires some cosmetic changes to the sales tax exemption for prescription drugs, K.S.A. 79-3606(p). See Section 6, p. 21, lines 37-43; p. 22 lines 1-5.

Kansas law contains an exemption for "medical equipment," but excluding items customarily used for human habitation purposes. K.S.A. 79-3606(hh). The Agreement contains a required definition for "durable medical equipment." This new term is inserted in the exemption statute, see Section 6, p. 25, lines 13-24.

Kansas law contains an exemption for prescribed prosthetic and orthopedic appliances. K.S.A. 79-3606(r). The Agreement contains required definitions for "prosthetic devices" and "mobility enhancing equipment." The exemption must be modified to use these terms. However, this should not substantively change the exemption. See Section 6, p. 22, lines 9-30.

State Administration of All Local Sales Taxes—Sections 29 through 40

The Agreement requires that all local sales taxes be administered at the state level. This is also current Kansas law. However, last year, the legislature adopted the "transportation district excise tax act" in House Bill 2949, which created a locally administered excise tax to support transportation infrastructure. It operates essentially like a local sales tax. Senate Bill 192 proposes to amend this act and make this tax a transportation district local sales tax, to be administered at the state level, in conformity with the Agreement.

Uniform State and Local Sales Tax Bases—Sections 5-6

The Agreement requires that by 2006, except for motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes, the sales tax base (i.e., the items subject to sales tax) must be identical at the state and local level. If an item is subject to state sales tax, it must also be subject to local sales tax, and vice versa. In Kansas, sales of water, natural gas, electricity and heat delivered through mains, lines or pipes for residential or agricultural use is exempt from state sales tax but subject to local sales tax. However, the Agreement does allow a state to impose a zero state sales tax rate on sales of piped natural or artificial gas, electricity, or other heating fuels delivered by the seller. Thus, the only state vs. local sales tax base issue for Kansas concerns sales of water for residential or agricultural use. Senate Bill 192 (Section 6, p. 23, lines 29-39) deletes from the state sales tax exemption at K.S.A. 79-3606(w) sales of natural gas, electricity, heat and water delivered through pipes, lines or mains, and deletes K.S.A. 79-3606(x),

the state exemption for sales of propane, LP gas, coal, wood and other fuel sources for the production of heat or lighting for residential use. Senate Bill 192 needs to be amended to provide that deletion of this exemption should not occur until 2006. Senate Bill 192 (Section 5, p. 13, lines 8-15) then provides, effective 2006, a “zero” percent state sales tax rate on the sales of natural gas, electricity, and heat delivered through pipes, lines or mains for residential or agricultural use, and a “zero” percent state sales tax rate on the sales of propane, LP gas, coal, wood and other fuels for residential use. However, sales of water for residential or agricultural use would be subject to both state and local sales tax, starting in 2006.

Local Use Tax—Section 2

Unlike many other states, Kansas does not have a local use tax, except for boats and motor vehicles (when the local use tax is paid upon registration). In order to “level the playing field” for Kansas brick and mortar merchants versus competing out-of-state retailers, and in order to allow local governments to participate in the benefits of the voluntary collection efforts of out-of-state retailers registering under the Agreement, a local use tax needs to be imposed. Otherwise, only state use tax would be due on out-of-state purchases, whereas both state and local sales tax is due on in-state purchases. Senate Bill 192 (Section 2, p. 3, lines 1-7) proposes to add a broad local use tax at K.S.A. 12-198, although this is not a requirement of the Agreement.

Use Tax on Services—Sections 2 and 11

Kansas law currently imposes use tax only on out-of-state purchases of tangible personal property used, consumed or stored in Kansas. There is no use tax on out-of-state purchases of services. Senate Bill 192 (Section 2, p. 3, lines 1-7; Section 11, p. 41) proposes to add a use tax on services, both at the state and local level, amending K.S.A. 79-3703 and K.S.A. 12-198. This particularly comes into play with the sale of custom computer software, which is treated as a sale of service under the Agreement definitions. Without the imposition of use tax on services, there would be no use tax owed on an out-of-state purchase of custom computer software, once the Agreement definitions are adopted. Under existing Kansas law, all computer software (both custom and canned) is defined as tangible personal property, so an out-of-state purchase would be subject to use tax.

Seller Registration—Section 8

The Agreement requires that states develop uniform registration procedures that would apply to out-of-state sellers voluntarily registering under the Agreement to collect sales or use tax. This includes electronic registration and registration through an agent. K.S.A. 79-3608, the sales tax registration statute, is amended accordingly. Retailers obligated to register in Kansas (because they are located in Kansas or “doing business” in Kansas) remain subject to the existing registration requirements.

Notices to Retailers of Tax Rate, Effective Date, and Taxing Jurisdiction Boundary Changes—Sections 1, 12 and 24

One of the major goals of the Agreement is to give retailers sufficient lead time to implement changes in state and local sales tax rates and taxing jurisdiction boundaries. Lack of sufficient lead time for sales tax changes has been a major complaint of the retail community. Under current law, there is no requirement for any lead time for a change to the state sales tax rate. The legislature could make a rate change effective at any time. The Agreement requires that state sales tax rate changes can be effective only on the first day of a quarter. It also requires that revenue departments must make a reasonable effort to provide sellers as much advance notice of changes as is practical, but sellers failing to receive such notice are not relieved of liability for

failing to comply with those changes. Section 12 (p. 41) of Senate Bill 192 contains these required changes. For services covering a period including a rate change, the rate change will go into effect for the first billing period starting on or after the rate change. See Section 24, p. 51.

The statute governing local sales tax rate and boundary changes, K.S.A. 12-191, was amended in 2001 to accommodate some of the Agreement requirements regarding lead time for local rate and boundary changes. Senate Bill 192 amends K.S.A. 12-191 to make additional required changes. Local rate changes will not apply to catalog purchases until the 1st day of the quarter following 150 days after the city or county has provided notice to the department of the change. Once the department receives such notice, the department is given 30 days to send notice of such change to sellers. Existing law provides that for other than catalog purchases, local rate and boundary changes can become effective on the 1st day of the quarter following the 90th day after the city has provided the department notice of the change. Senate Bill 192 requires that after receiving such notice, the department must give sellers notice of the change within 30 days. See Section 1, p. 2, lines 20-34.

Database for Rate and Boundary Changes—Sections 13-14

The Agreement requires that, as of the date that a state joins the Agreement, the state must develop and maintain an electronic database (in downloadable format) of all taxing jurisdiction boundaries, rates and the effective dates of any changes, pursuant to certain standards. The state must further develop and maintain a database that assigns each 5 and 9 digit zip code to the proper rates and taxing jurisdictions. The state must also participate with other member states in developing an address-based system for assigning taxing jurisdictions, meeting the requirements of the federal Mobile Telecommunications Sourcing Act. Once these databases are developed, sellers would be relieved from liability for charging the wrong rates if the state's databases contained erroneous rate information, and sellers relied on that information. However, no liability relief is provided if the state develops an address-based system meeting the requirements of the federal Mobile Telecommunications Sourcing Act. Senate Bill 192 makes these changes at Sections 13-14.

Sourcing Rules—Sections 1, 15-19

Probably the most significant changes to Kansas sales tax law required by the Agreement are the sourcing rules. They are found at Sections 15-19 of Senate Bill 192. The sourcing rules identify the local sales or use tax that should apply to the transaction. They are quite lengthy and sound very complex, but in principle, can be described simply. Under current Kansas law, sales are generally sourced to the retailer's business location, for purposes of determining the local sales taxes that are due. Thus, the local sales tax in effect at the seller's location applies. This is an "origin-based" sourcing rule. The Agreement uses a "destination-based" sourcing rule to determine the applicable local sales or use tax. Under "destination-based" sourcing rules, the sale is "sourced" to the retailer's location, if the buyer takes possession of the merchandise there. However, if the retailer delivers or ships the merchandise to the buyer's location, the sale is "sourced" to buyer's location, and the local sales or use tax applicable at the buyer's location will apply.

There are items excepted out of the Agreement sourcing rules: sales of watercraft, modular homes, manufactured homes or mobile homes, and the sale of certain motor vehicles, trailers, semitrailers or aircraft not used in interstate commerce. These sales remain sourced to the retailer's location under the current rules.

Special sourcing rules exist for specific categories of sales. See Section 16. For leases of tangible personal property in which periodic payments are made, the first lease payment is sourced under the general “destination-based” sourcing rules. Later payments are sourced to primary property location. For leases with only one payment, the sale is sourced under the general “destination-based” rules. This is essentially consistent with current Kansas law, and the law of most states. For leases of motor vehicles and aircraft not used in interstate commerce, all periodic lease payments are sourced to the primary property location. If there is only one lease payment, it is sourced under the general rules. Retail sale and leases of motor vehicles and aircraft used in interstate commerce are sourced under the general “destination-based” sourcing rules.

When the purchased item can be used in several different locations (such as with computer software purchased by a large company for use in its offices located in several states), the purchaser may give the seller a “multiple points of use” exemption certificate. The seller is then relieved of the obligation of collecting sales or use tax, and the purchaser assumes to burden to properly apportion the use tax among the jurisdictions in which the item is being used. See Section 17.

Likewise, with a direct mailing to addresses in several states, the purchaser of the mailing may give to the printer a “direct mail form” showing the multiple jurisdictions where the mailing is to be sent. The printer is then relieved of the obligation to collect sales or use tax, and the purchaser assumes the obligation directly remit the tax to the appropriate taxing jurisdictions, based on the mailing. See Section 18.

Telecommunications service has its own sourcing rules. See Section 19. The Agreement telecommunications sourcing rules are essentially the same as under current Kansas law. They are also consistent with the federal Mobile Telecommunications Sourcing Act, adopted in Kansas last year.

Administration of Exemptions—Section 10

A purchaser claiming an exemption for sales tax must give to the seller a properly completed exemption certificate at the time of purchase, documenting the reason for the exemption and providing information concerning the sale and the identify of the purchaser. The seller then need not charge sales tax on the transaction. The seller must retain the exemption certificate and make it available upon audit. Otherwise, the seller is subject to assessment. The Agreement removes the “good faith” burden on sellers existing under current Kansas law, when a sellers accepts an exemption certificate. The seller need not make any independent judgment (absent fraud) as to whether the exemption claim is valid, so long as the seller obtains a properly completed exemption certificate. The Agreement also provides that exemption certificates may be filed electronically. Section 10, pp. 39-40, makes these changes to K.S.A. 79-3651.

Uniform Returns—Section 7

The Agreement requires that sellers who are not obligated to register in a state can voluntarily register under the Agreement to voluntarily collect and remit sales and use tax. The state can require electronic filing by these sellers and can approve a simplified format for the return, which must be filed at least annually, unless collections exceed \$1600 in a month, in which case, returns must be filed monthly thereafter. Section 7, p. 37, lines 41-43; p. 38, lines 1-12, makes these changes to K.S.A. 79-3607. Filing requirements for sellers obligated to register remain the same as under existing law.

Electronic Remittances—Section 3

Under the Agreement, a state can require model 1, 2 or 3 sellers to make sales or use tax remittances electronically. Section 3, p. 4, lines 17-20, amends K.S.A. 75-5151 to impose this requirement.

Uniform Bad Debt Recovery Rules—Section 20

When a seller sells merchandise, receives only partial payment, but has remitted the full amount of sales tax owed on the transaction (as required), the seller may incur a “bad debt” if the buyer later defaults on the transaction. Typically, the seller can take a “bad debt deduction” for sales tax previously remitted on defaulted sales transactions. Some states allow the party providing financing for the defaulted sales transaction to take the “bad debt deduction.” Kansas only allows sellers the bad debt deduction. Third-party financiers are not eligible. Under the Agreement, a state retains the option whether to allow only sellers to receive the bad debt deduction. However, member states use uniform rules governing how sellers are permitted to deduct bad debts. The bad debt deduction rules in the Agreement are essentially in line with current department policy.

Confidentiality and Privacy Protections—Section 21

Confidentiality and privacy protection already exists under current law with respect to taxpayer information from sellers required to register. K.S.A. 79-3614. The Agreement focuses on ensuring that states have in place confidentiality and privacy protections with respect to “personally identifiable information” that certified service providers must collect concerning consumers when handling the sales and use tax collection, reporting and remitting responsibilities for model 1 sellers. Section 21 contains those changes.

Uniform Rounding Rules—Section 22

Rounding rules apply to determine when a sales tax amount calculation should be “rounded up” to the nearest whole cent. The Agreement requires that member states use a uniform rounding rule, and that the tax computation should be carried to the third decimal place, and rounded up to the next cent whenever the third decimal place is greater than four. This is consistent with current policy. Section 22 would codify this policy.

Customer Refund Procedures—Section 9

The Agreement requires that member states include in their refund procedures a provision that requires a purchaser, before suing a seller for over-collected sales tax, to give the seller 60 days written notice and an opportunity to respond. Section 9, pp. 38-39 makes this addition to K.S.A. 79-3650(b).

Taxability Matrix—Section 23

The Agreement requires that a member state must maintain a “taxability matrix” in a database in downloadable format. The taxability matrix will list the products and services taxable in Kansas. Sellers and certified service providers are relieved from liability to the state or local jurisdiction for having charged or collected incorrect amounts in reliance on erroneous data contained in the taxability matrix.

Seller Participation—Section 25

The Agreement requires that member states develop an online central registration system for out-of-state sellers volunteering to register under the Agreement. Sellers already obligated to register (because they have nexus with the state) must comply with the existing state registration rules.

The fact that a seller voluntarily registers under the Agreement cannot be used as a factor in determining whether that seller has nexus with the state.

Amnesty for Registration—Section 26

Amnesty for past sales or use tax collections is available to a seller registering under the Agreement, provided the seller was not registered with the state within the 12-month period preceding the effective date of the state's joining the Agreement, and the seller registers within the 12-month period following that effective date. Amnesty is not available to sellers under audit. The seller must continue to remain registered and collect taxes for at least 36 months, for the amnesty to be effective.

Method of Remittance—Section 27

Sellers registering under the Agreement may select 1 of 3 models to operate under: model 1 (seller relies on a certified service provider to perform all tax functions on its sales), model 2 (seller relies on a certified automated system to calculate the tax on each transaction, but the seller performs all other tax functions), or model 3 (seller utilizes a certified proprietary automated sales tax system).

Registration By An Agent—Section 8

The Agreement requires that member states permit sellers to register through a duly appointed agent. Section 8, p. 38, lines 22-24, so amends K.S.A. 79-3608.

Monetary Compensation

The Agreement requires that member states provide monetary compensation to certified service providers under model 1, model 2 and 3 sellers. However, the compensation terms are the subject of contractual negotiations between the governing board and certified service providers, to be determined at some point in the future. Therefore, the compensation provisions in the Agreement are not contained in Senate Bill 192. After those compensation provisions are contractually agreed to, Kansas can at that point legislatively approve them. Also, the Agreement compensation provisions are based only on sales tax revenue remitted by model 1, 2 and 3 sellers registering under the Agreement voluntarily. Whether a state chooses to provide compensation to sellers required by law to register, in the form of an across-the-board discount, remains a matter for each state to decide individually

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February 17, 2003

Testimony of Gary Anderson, Gilmore & Bell, P.C., Bond Counsel to the Unified Government of Wyandotte County/Kansas City, Kansas, and the City of Olathe, Kansas before the Committee on Assessment and Taxation.

My name is Gary Anderson and I am an attorney with the law firm of Gilmore & Bell, P.C. in our Kansas City office. I personally act as bond counsel for the Unified Government of Wyandotte County/Kansas City, Kansas, the City of Olathe, Kansas and other Kansas communities for both Transportation Development District (TDD) and Tax Increment Financing (TIF) projects.

I have here to support SB 192 with certain modifications to the Transportation Development District provisions, a new section regarding reporting of sales tax information for Transportation Development Districts and TIF projects and certain earlier effective dates of portions of the bill.

I was the primary author of HB 2949 adopted by the legislature during the 2002 session, which is known as the transportation development district act. In working with the act since last year and specifically in connection with a project with the City of Manhattan, certain amendments to the TDD act were believed to be beneficial. We have been working with the Attorney General's office and other interested bond counsel on a few amendments to the TDD act. Most of comments to Sections 29-37 of the proposed bill pertain to those amendments that were planned to be introduced this session as a separate bill.

However, since the Department of Revenue as part of this streamlined sales tax desires to include the transportation district sales tax within the sales taxes they collect, which I believe just about everyone supports, we have chosen to include our changes to the transportation development provisions herein. I know that many of the communities we represent applaud the Department of Revenues imitative to include the TDD sales tax within their administration and collection responsibilities, since these obligations would impose substantial administrative burdens on local communities.

Proposed new Section 40 of the bill deals with sales, use and transient guest tax information in TIF and transportation districts. In connection with TIF and TDD projects that use retail sales, use and/or transient guest tax revenues as a source of repayment of bonds, it is very important that the sales, use and/or transient guest tax revenues be adequately tracked within the TIF district or TDD by the municipality and Bond Trustee. The property tracking and allocation of these tax revenues allows for the appropriate revenues generated from the TIF project or the TDD to be used to repay the bonds. In circumstances where there may be multiple tenants within a TIF district or TDD and more than one series of bonds, it is very important that the sales, use and transient guest tax revenues be adequately tracked so that they are properly allocated to the respective bond issue. This is especially true in connection with the 400 acres in Wyandotte County that abut the Kansas Speedway, but it is also important in other TIF districts and TDDs in Kansas.

*Senacc Assessment & Taxation
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Attachment 2*

Pursuant to current state law, sales tax return information is confidential. However, it is necessary for the sales, use and transient guest tax revenues to be shared by the Department of Revenue and the municipality with the Bond Trustee for purposes of properly tracking and allocating the sales, use and transient guest tax revenues within the TIF district and TDDs for each separate TIF and TDD project and each separate bond issue.

Consequently, we have prepared the proposed Section 40 which would allow for the sales, use and transient guest tax information to be shared with the Bond Trustee; provided, however, that the Bond Trustee must keep such information otherwise confidential.

I would request that the provisions relating to transportation districts and the reporting of sales, use and transient guest taxes be effective July 1, 2003 instead of July 1, 2004 for the rest of SB 192.

I have attached my proposed markup of certain sections of Senate Bill 192 that relate to the amendments being proposed. I look forward to working with this Committee and others on these suggested changes.

Thank you for your consideration of this legislation and I would be happy to try and answer any questions.

Gary A. Anderson
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SENATE BILL No. 192

By Committee on Assessment and Taxation

2-10

GARY ANDERSON
GILMORE & BELL, P.C.
2/17/03

AN ACT concerning sales taxation; enacting the streamlined sales and use tax agreement conformity act; local sales tax transportation development district act; amending K.S.A. 12-191, 12-198, 75-5151, 79-3607, 79-3608 and 79-3651 and K.S.A. 2002 Supp. 12-194, 25-432, 79-3602, 79-3603, 79-3606, 79-3650 and 79-3703 and repealing the existing sections; also repealing K.S.A. 12-191a.

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

Section 1. K.S.A. 12-191 is hereby amended to read as follows: 12-191. All retail transactions consummated within a county or city having a retail sales tax, which transactions are subject to the Kansas retailers' sales tax, shall also be subject to such county or city retail sales tax. Except as hereinafter provided, all retail sales, for the purpose of this act, shall be considered to have been consummated at the ~~place of business of the retailer~~ location determined by the sourcing rules as provided in section 16, and amendments thereto. The retail sales or transfer of watercraft, modular homes, manufactured homes or mobile homes, shall be considered consummated at the place of business of the retailer and sourced to such location. The retail sale, excluding the lease or rental, of motor vehicles, trailers, semi-trailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of section 16, and amendments thereto, shall be considered consummated at the place of business of the retailer and sourced to such location. The isolated or occasional sale of any motor vehicle or trailer shall be considered consummated at the taxing jurisdiction where the sale is made. If the sale negotiations occurred in different cities or counties, the situs of the sale for local sales tax purposes shall be the place where the motor vehicle or trailer was kept at the time negotiations were first entered into. In the event the place of business of a retailer is doubtful the place or places at which the retail sales are consummated for the purposes of this act shall be determined under rules and regulations adopted by the secretary of revenue which rules and regulations shall be considered with state and federal law insofar as applicable. Retail sales involving the use, consumption, or furnishing of gas, water, electricity and heat, for the purposes of this act, shall be considered to have been consummated at the situs of the user or recipient

1 (b) model 2, wherein a seller selects a certified automated system to
2 use which calculates the amount of tax due on a transaction; or

3 (c) model 3, wherein a seller utilizes its own proprietary automated
4 sales tax system that has been certified as a certified automated system.

5 New Sec. 28. The provisions of this act shall be known and may be
6 cited as the streamlined sales and use tax agreement conformity act.

7 New Sec. 29. (a) Sections 29 through ~~35~~ ³⁷, and amendments thereto,
8 shall be known and may be cited as the local sales tax transportation
9 development district act.

10 (b) The powers conferred by this act are for public uses and purposes
11 for which public money may be expended.

12 New Sec. 30. As used in sections 29 through ~~38~~ ³⁷, and amendments
13 thereto: (a) "Acquire" means the acquisition of property or interests in
14 property by purchase, gift, condemnation or other lawful means and may
15 include the acquisition of existing property and projects already owned
16 by a municipality.

17 (b) "Act" means the provisions of sections 29 through 38, and amend-
18 ments thereto.

19 (c) "Bonds" means special obligation bonds or special obligation
20 notes payable solely from the sources described in section 35, and amend-
21 ments thereto, issued by a municipality in accordance with the provisions
22 of this act.

23 (d) "Consultant" means engineers, architects, planners, attorneys and
24 other persons deemed competent to advise and assist the governing body
25 in planning and making of projects.

26 (e) "Cost" means: (1) All costs necessarily incurred for the prepara-
27 tion of preliminary reports, the preparation of plans and specifications,
28 the preparation and publication of notices of hearings, resolutions, ordi-
29 nances and other proceedings, necessary fees and expenses of consultants
30 and interest accrued on borrowed money during the period of construc-
31 tion together with the cost of land, materials, labor and other lawful ex-
32 penses incurred in planning and doing any project and may include a
33 charge of not to exceed 5% of the total cost of a project or the cost of
34 work done by the municipality to reimburse the municipality for the serv-
35 ices rendered by the municipality in the administration and supervision
36 of such project by its general officers; and (2) in the case of property and
37 projects already owned by the municipality and previously financed by
38 the issuance of revenue bonds, cost means the principal amount of such
39 outstanding revenue bonds plus the amount of matured interest, interest
40 maturing within 90 days, plus the amount of any call premium or purchase
41 premium required.

42 (f) "District" means a transportation development district created
43 pursuant to this act.

37

or economic
development purposes

1 (g) "Governing body" means the governing body of a city or the board
2 of county commissioners of a county.

3 (h) "Municipality" means any city or county.

4 (i) "Newspaper" means the official newspaper of the municipality.

5 (j) "Project" means any project or undertaking to improve any bridge,
6 street, road, highway access road, interchange, intersection, signing, sig-
7 nalization, parking lot, bus stop, station, garage, terminal, hangar, shelter,
8 rest area, dock, wharf, lake or river port, airport, railroad, light rail or
9 other mass transit facility ~~and any similar or related project~~ or
10 infrastructure.

any other
transportation-related
project

11 (k) "Local sales transportation district tax" means the tax authorized
12 by section 34, and amendments thereto.

13 (l) "To improve" means to construct, reconstruct, maintain, restore,
14 replace, renew, repair, install, furnish, equip or extend any project.

15 New Sec. 31. (a) In addition to any other power provided by law and
16 as a complete alternative to all other methods provided by law, the gov-
17 erning body of any municipality may create a transportation development
18 district as provided by this act for the purpose of financing projects. A
19 municipality may create a district upon receipt of a petition signed by the
20 owners of record, whether resident or not, of all of the land area within
21 the proposed district. The petition shall contain: (1) The general nature
22 of the proposed project;

- 23 (2) the estimated cost of the project;
- 24 (3) the proposed method of financing the district;
- 25 (4) the proposed method of assessment;
- 26 (5) the proposed amount of any sales tax; and
- 27 (6) a map or boundary description of the proposed district.

28 (b) Names may not be withdrawn from the petitions by the signers
29 thereof after the governing body commences consideration of the peti-
30 tions or later than seven days after such filing, whichever occurs first, and
31 the petitions shall contain a notice that the names of the signers may not
32 be withdrawn after such a period of time.

33 ~~(c) The district boundaries and the method of financing for the pro-~~
34 ~~ject shall not require that all property that is benefited by the project be~~
35 ~~included in the district or be subject to an assessment or the local sales~~
36 ~~transportation district tax.~~

37 ~~New Sec. 32. (a) Before the creation of any district, the governing~~
38 ~~body, by resolution, shall call and hold a public hearing on the advisability~~
39 ~~of the creating of the district and the financing of the project. Notice of~~
40 ~~the hearing shall be given by at least one publication in a newspaper and~~
41 ~~by certified mail to all property owners within the proposed district. The~~
42 ~~notice shall be published at least seven days prior to the date of hearing~~
43 ~~and the certified mailed notice shall be sent at least 10 days prior to the~~

for a district financed
only by assessments

(c) Upon filing of the petition, the governing body may proceed
without notice or a hearing to make findings by resolution or
ordinance as to the advisability of the project, the nature of the
project, the estimated cost, the boundaries of the district
and the method of assessment, if any, and thereupon to authorize
the project in accordance with the findings on advisability. The
resolution or ordinance shall become effective upon publication
once in the newspaper.

- 1 date of hearing. Such notice shall contain the following information: (1)
- 2 Time and place of hearing;
- 3 (2) general nature of the proposed project;
- 4 (3) the estimated cost of the project;
- 5 (4) the proposed method of financing of the project;
- 6 (5) the proposed amount of assessments and the method of
- 7 assessment;
- 8 (6) the proposed amount of any local sales transportation district tax;
- 9 and
- 10 (7) a map or boundary description of the proposed district.

11 (b) The hearing may be adjourned from time to time. Following the
 12 hearing or any continuation thereof, the governing body may create the
 13 district, authorize the project and approve the estimated cost of the pro-
 14 ject, the boundaries of the district, the method of financing and the
 15 method of assessments, if any, by adoption of the appropriate ordinance
 16 or resolution.

17 (c) The area of the district to be assessed may be less than, but shall
 18 not exceed, the area proposed to be assessed as stated in the notice of
 19 hearing without giving notice and holding a new hearing on the project.

20 (d) Nothing in this section shall be construed as authorizing the im-
 21 position of a local sales transportation district tax until authorized as pro-
 22 vided by section 34 and amendments thereto.

23 New Sec. 33. ²In addition to any other power provided by law and as
 24 a complete alternative to all other methods provided by law, the governing
 25 body may make, or cause to be made, projects which confer a special
 26 benefit upon property within the district and may levy and collect special
 27 assessments upon property in the district and provide for the payment of
 28 all or any part of the cost of the project out of the proceeds of such special
 29 assessments. If special assessments will be levied to finance all or a portion
 30 of the cost of a project, the municipality shall follow the assessment pro-
 31 cedures in K.S.A. 12-6a01 *et seq.*, and amendments thereto, except that
 32 no project costs may be apportioned against the municipality at large and
 33 no full faith and credit notes or bonds may be issued by the municipality
 34 to finance a project under this act. ~~A petition submitted pursuant to sec-~~
 35 ~~tion 31 and amendments thereto shall be conclusive as to the method~~
 36 ~~of assessment, property to be included in the district and benefits of any~~
 37 ~~project.~~

38 New Sec. 34. ³³(a) In addition and notwithstanding any limitations on
 39 the aggregate amount of the retailers' sales tax contained in K.S.A. 12-
 40 187 through 12-197, and amendments thereto, any municipality may im-
 41 pose a local sales transportation district tax on the selling of tangible per-
 42 sonal property at retail or rendering or furnishing services within a
 43 transportation development district for purposes of financing a project in

New Section 32. (a) Upon filing a petition for a district
 financed in whole or in part by a proposed local sales
 transportation district tax authorized by this section, the
 municipality shall adopt a resolution: stating its intention to
 levy such sales tax, and give notice of the public hearing
 on the advisability of creating of the district and financing
 of the project. Such notice shall be published at least once
 each week for two consecutive weeks in the newspaper and
 shall be sent certified mail to all property owners within the
 proposed district. The notice shall be published at least
 seven days prior to the date of hearing and the certified
 mailed notice shall be sent at least 10 days prior to the date
 of hearing. Such notice shall contain the following
 information:

- (1) Time and place of hearing;
- (2) general nature of the proposed project;
- (3) the estimated cost of the project;
- (4) the proposed method of financing of the project;
- (5) the proposed amount of the local sales transportation
 district tax; and
- (6) a map or boundary description of the proposed district.

(c) The hearing on the advisability of the creating of the
 district and the financing of the project may be adjourned
 from time to time. Following the hearing or any
 continuation thereof, the governing body may create the
 district, authorize the project and approve the estimated
 cost of the project, the boundaries of the district and the
 method of financing by adoption of the appropriate
 ordinance or resolution, which shall become effective upon
 publication once in the newspaper, *unless*, within 30 days
 after the commencement of the hearing, a petition signed
 by at least 5% of the owners of record within the district is
 submitted to the clerk of the municipality requesting an
 election upon such question. An election of the owners of
 record whether resident or not, shall then be called and held
 thereon, in accordance with section 33(b).

1 such district in any increment of .10% or .25% not to exceed 1% and
 2 pledging the revenue received therefrom to pay the bonds issued for the
 3 project. Any local sales transportation district tax imposed pursuant to this
 4 section shall expire no later than the date the bonds issued to finance
 5 such project or refunding bonds issued therefore shall mature.

6 (b) Any municipality proposing to impose a local sales transportation
 7 district tax authorized by this section shall adopt a resolution stating its
 8 intention to levy such tax. Such notice shall be published at least once
 9 each week for two consecutive weeks in the newspaper. ~~If within 30 days~~ *Such notice may run*
 10 after the last publication of the notice a petition signed by at least 5% of
 11 the owners of record within the transportation development district is
 12 submitted to the clerk of the municipality requesting an election upon
 13 such question, an election of the owners of record, whether resident or
 14 not, shall be called and held thereon. Such election shall be called and
 15 held in the manner provided by K.S.A. 25-431 *et seq.*, and amendments
 16 thereto. If no protest or no sufficient protest is filed or if an election is
 17 held and the proposition carries by a majority of the owners of record
 18 within the district voting thereon, the governing body, by resolution or
 19 ordinance, may levy such tax. Except as provided in this act, the tax au-
 20 thorized by this section shall be administered, collected and subject to
 21 provisions of K.S.A. 12-187 to 12-197, inclusive, and amendments thereto.

22 (c) Upon receipt of a certified copy of the resolution or ordinance
 23 authorizing the levy of the local sales transportation district tax pursuant
 24 to this section, the state director of taxation shall cause such tax to be
 25 collected in the district at the same time and in the same manner provided
 26 for the collection of the state retailers' sales tax. All of the taxes collected
 27 under the provisions of this act shall be remitted by the secretary of
 28 revenue to the state treasurer in accordance with the provisions of K.S.A.
 29 75-4215, and amendments thereto. Upon receipt of each such remittance,
 30 the state treasurer shall deposit the entire amount in the state treasury,
 31 and the state treasurer shall credit 2% of all taxes so collected to the state
 32 general fund to defray the expenses of the department in administration
 33 and enforcement of the collection thereof. The remainder of such taxes
 34 shall be credited to the local sales transportation district tax fund, which
 35 fund is hereby established. All moneys in the local sales transportation
 36 district tax fund shall be remitted at least quarterly by the state treasurer,
 37 on instruction from the secretary of revenue, to the treasurers of those
 38 municipalities which are qualified to receive disbursements from such
 39 fund the amount collected within such municipality. Any refund due on
 40 any local sales transportation district tax collected pursuant to this section
 41 shall be paid out of the local sales transportation development district tax
 42 refund fund which is hereby established in the state treasury and rein-
 43 bursed by the director of taxation from collections of the sales tax au-

Such notice and protest
 may run simultaneously
 with the public hearing notice
 in Section 32 hereof.

36

1 thorized by this section. All local sales tax revenue collected pursuant to
2 this section shall be remitted at least quarterly by the state treasurer, on
3 instruction from the director of taxation, to the treasurer of such munic-
4 ipality. Upon receipt thereof, the treasurer of the municipality shall de-
5 posit such revenue in the transportation district fund created pursuant to
6 section 35, and amendments thereto.

34

7 New Sec. 35. No suit to set aside the assessments, the local sales
8 transportation district tax or otherwise question the validity of the pro-
9 ceedings for the creation of the district or the authorization of the project
10 shall be brought after the expiration of 30 days from the adoption of the
11 ordinance or resolution creating the district.

35

12 New Sec. 35. The total cost of any project authorized pursuant to
13 this act shall be paid from all or any of the following sources: (a) Special
14 assessments imposed in the district pursuant to this act which have been
15 paid in full prior to the date set by the governing body as provided in
16 K.S.A. 12-6a10, and amendments thereto, shall be paid from assessments
17 so collected;

18 (b) special assessments imposed in the district pursuant to this act,
19 to be paid in installments;

20 (c) a pledge of all of the revenue received from the local sales trans-
21 portation district tax authorized by section 37, and amendments thereto;
22 and

33

23 (d) any other funds appropriated by the municipality.

36

24 New Sec. 37. A separate fund shall be created for each district and
25 each project and such fund shall be identified by a suitable title. The
26 proceeds from the sale of bonds and any other moneys appropriated by
27 the governing body for such purpose shall be credited to such fund. Such
28 fund shall be used solely to pay the costs of the project.

37

29 New Sec. 37. (a) Any municipality may issue bonds in one or more
30 series to finance the undertaking of any project in accordance with the
31 provisions of this act. Such bonds shall be made payable, both as to prin-
32 cipal and interest solely from a pledge of the sources of funds described
33 in section 35, and amendments thereto. The municipality may pledge
34 such revenue to the repayment of such bonds prior to, simultaneously
35 with or subsequent to the issuance of such bonds,

36 (b) Bonds issued pursuant to subsection (a) shall not be general ob-
37 ligations of the municipality, give rise to a charge against its general credit
38 or taxing powers, or be payable out of any funds or properties other than
39 any of those set forth in subsection (a) and such bonds shall so state on
40 their face.

41 (c) Bonds issued pursuant to subsection (a) shall be special obliga-
42 tions of the municipality and are declared to be negotiable instruments.
43 Such bonds shall be executed by the authorized representatives of the

publication

or the publication of
the ordinance or
resolution imposing
the local sales
transportation district
tax

except for any revenues
received under section
35(d), which revenues are
subject to annual
appropriation.

35

1 municipality and sealed with the corporate seal of the municipality. All
2 details pertaining to the issuance of the bonds and terms and conditions
3 thereof shall be determined by ordinance or resolution of the municipi-
4 pality. The provisions of K.S.A. 10-106, and amendments thereto, re-
5 quiring a public sale of bonds shall not apply to bonds issued under this
6 act. All bonds issued pursuant to this act and all income or interest there-
7 from shall be exempt from all state taxes except inheritance taxes. Such
8 bonds shall contain none of the recitals set forth in K.S.A. 10-112, and
9 amendments thereto. Such bonds shall contain the following recitals: The
10 authority under which such bonds are issued; that such bonds are in
11 conformity with the provisions, restrictions and limitations thereof; and
12 that such bonds and the interest thereon are to be paid from the money
13 and revenue received as provided in subsection (a).

Such bonds shall mature in no more than 22 years.

14 (d) Any municipality issuing bonds under the provisions of this act
15 may refund all or part of such issue pursuant to the provisions of K.S.A.
16 10-116a, and amendments thereto.

17 (e) Bonds issued under the provisions of this act shall be in addition
18 to and not subject to any statutory limitation of bonded indebtedness
19 imposed on such municipality.

38
20 Sec. ~~34~~ K.S.A. 2002 Supp. 12-194 is hereby amended to read as
21 follows: 12-194. No city or county shall levy or impose an excise tax or a
22 tax in the nature of an excise, other than a retailers' sales tax and a com-
23 pensating use tax, upon the sale or transfer of personal or real property,
24 or the use thereof, or the rendering of a service, but the provisions of this
25 section shall not be construed as prohibiting any city from (a) contracting
26 with a utility for a fixed charge based upon a percentage of gross receipts
27 derived from the service permitted by grant, right, privilege or franchise
28 to such utility; (b) imposing an occupation tax or license fee for the priv-
29 ilege of engaging in any business, trade, occupation or profession, or ren-
30 dering or furnishing any service, but the determination of any such license
31 fee shall not be based upon any amount the licensee has received from
32 the sale or transfer of personal or real property, or for the rendering or
33 furnishing of a service, or on the income of the licensee; or (c) levying
34 any occupation tax or license fee imposed by such city prior to the effec-
35 tive date of this act; or (d) levying a tax for the purpose of financing a
36 transportation development district, created under K.S.A. 2002 Supp. 12-
37 17,130 through 12-17,139, and amendments thereto. No license fee de-
38 scribed in subsection (b) of this section shall be imposed upon any utility
39 contracting with and subject to a charge, described in subsection (a) of
40 this section, by such city.

41 Sec. ~~40~~ K.S.A. 2002 Supp. 25-432 is hereby amended to read as
42 follows: 25-432. An election shall not be conducted under this act unless:
43 (a) Conducted on a date, mutually agreed upon by the governing

39

- 1 body of the political or taxing subdivision and the county election officer,
 2 not later than 120 days following the date the request is submitted by the
 3 political or taxing subdivision; and
 4 (b) the secretary of state approves a written plan for conduct of the
 5 election, which shall include a written timetable for the conduct of the
 6 election, submitted by the county election officer; and
 7 (c) the election is nonpartisan; and
 8 (d) the election is not one at which any candidate is elected, retained
 9 or recalled; and
 10 (e) the election is not held on the same date as another election in
 11 which the qualified electors of that subdivision of government are eligible
 12 to cast ballots; and
 13 (f) the election is a question submitted election at which all of the
 14 qualified electors of one of the following subdivisions of government are
 15 the only electors eligible to vote:
- 16 (1) Counties;
 - 17 (2) cities;
 - 18 (3) school districts, except in an election held pursuant to K.S.A. 72-
 19 7302 *et seq.*, and amendments thereto;
 - 20 (4) townships;
 - 21 (5) benefit districts organized under K.S.A. 31-301, and amendments
 22 thereto;
 - 23 (6) cemetery districts organized under K.S.A. 15-1013 or 17-1330,
 24 and amendments thereto;
 - 25 (7) combined sewer districts organized under K.S.A. 19-27,169, and
 26 amendments thereto;
 - 27 (8) community college districts organized under K.S.A. 71-1101 *et*
 28 *seq.*, and amendments thereto;
 - 29 (9) fire districts organized under K.S.A. 19-3601 or 80-1512, and
 30 amendments thereto;
 - 31 (10) hospital districts;
 - 32 (11) improvement districts organized under K.S.A. 19-2753, and
 33 amendments thereto;
 - 34 (12) Johnson county park and recreation district organized under
 35 K.S.A. 19-2859, and amendments thereto;
 - 36 (13) sewage disposal districts organized under K.S.A. 19-27,140, and
 37 amendments thereto;
 - 38 (14) water districts organized under K.S.A. 19-3501 *et seq.*, and
 39 amendments thereto; or
 - 40 (15) transportation development districts created pursuant to ~~K.S.A.~~
 41 ~~2002 Supp. 12-17,130 section 29 et seq.~~, and amendments thereto.
 42 Sec. 41. K.S.A. 12-191, 12-191a, 12-198, 75-5151, 79-3607, 79-3608
 43 and 79-3651 and K.S.A. 2002 Supp. 12-194, 25-432, 79-3602, 79-3603,

Section 40. The secretary of revenue in connection with (1) a redevelopment project area for which sales, use and transient guest tax revenues are pledged or otherwise intended to be used in whole or in part for the payment of bonds issued to finance redevelopment project costs in such redevelopment project area or (2) a transportation development district for which a local sales transportation tax has been imposed, shall provide reports identifying each retailer having a place of business in such redevelopment district or transportation development district setting forth the tax liability and the amount of such tax remitted by each retailer during the preceding month and identifying each business location maintained by the retailer within such city or county. Such report shall be made available to the bond trustee, escrow agent or paying agent for such bonds within a reasonable time after it has been requested from the director of taxation. The bond trustee, escrow agent or paying agent shall keep such retailers' sales, use and transient guest tax returns and the information contained therein confidential, but may use such information for purposes of allocating and depositing such sales, use and transient guest tax revenues in connection with the bonds used to finance redevelopment project costs in such redevelopment project area or used to finance the costs of a project in a transportation development district. Except as otherwise provided herein, the sales, use and transient guest tax returns received by the bond trustee, escrow agent or paying agent shall be subject to the provisions of K.S.A. 79-3614.

1 79-3606, 79-3650 and 79-3703 are hereby repealed.
 2 Sec. 42. ~~The~~ act shall take effect and be in force from and after July
 3 1, 2004, and its publication in the statute book.
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Sections 29 through 40 of this act shall take effect and be in force from and after July 1, 2003 and their publication in the statute book and the balance of ~~the~~ this

Sec. 42 The provisions of Sections 29 through 40 of this act shall apply to transportation development districts created after July 1, 2003, however, any municipality which has created a transportation development district prior to the effective date of these sections of this act may, by ordinance or resolution of the governing body, elect to have the provisions of Sections 29 through 40 of this act apply to such transportation development district.

LEGISLATIVE TESTIMONY



The Unified Voice of Business

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SB 192

February 17, 2003

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony before the Senate Assessment and Taxation Committee
By S. Lewis Ebert, President and CEO

Chairman Corbin and members of the Committee:

I am Lew Ebert, President of the Kansas Chamber of Commerce and Industry (KCCI) testifying in favor of SB 192. I am here on behalf of both KCCI and the Kansas Retail Council (KRC).

The current system for collecting and remitting sales tax is very burdensome and complex. Simplification is needed in this area and businesses across the state are excited to see the Kansas Legislature addressing this issue. Companies large and small will benefit from the changes being proposed in SB 192. A streamlined system would simplify the process of sales tax collection and remittance, increase compliance with existing sales tax laws, and bring increased revenue to the state.

Kansas' retailers also support this project. Retailers feel that they do not have a level playing field to operate on. Businesses with nexus in the state, a physical presence, are required to collect and remit sales tax. Vendors that do not have a physical presence are not. Some large retail companies are creating separate Internet entities that do not have a presence in many states, thus getting around the requirements of collecting and remitting sales tax. Additionally, large retailers with physical presence in only a handful of states do not have to charge sales tax and as a result, their product is sold at a lower price.

Not in the current bill, but another element to the SSTP that we support is the enactment of a vendor or administrative allowance. Retailers in Kansas are required to collect and remit sales tax to the Department of Revenue without compensation. They are not reimbursed for any of their expenses. Kansas' retailers believe that they should be compensated for this. The SSTP proposal includes a vendor allowance for remote retailers. If this was enacted for remote retailers but not Kansas retailers it would be unfair and discriminatory to those in state. Businesses that collect

*Senate Assessment & Taxation
2-17-03
Attachment 3*

and, like sales tax, retailers, telecommunications companies and manufacturers alike, are optimistic that this is possible. The SSTP and may be enacted in Kansas.

The SSTP will not impose new taxes on Kansans. Sales and use tax laws have been on the books for many years. Today, if a person buys something out of state and does not pay sales tax on that item, they are required by Kansas law to pay a use tax when they bring it back into the state. Many of us that order products over the Internet or through a catalogue and do not pay sales tax on the item should remit a use tax to the Kansas Department of Revenue. There are very few people that do this. In effect, enactment of the SSTP in Kansas would only be enforcing a law that is already on the books.

This legislation helps small businesses in many ways. SSTP simplifies exemption processing with protection for sellers that accept exemption certificates; it allows a small business the option to use state-certified software of a Certified Service Provider to reduce or eliminate sales tax administrative burdens; and, SSTP makes it easier for businesses to expand to markets in other states via the Internet because all states will use the uniform definitions and administrative procedures.

KCCI and the KRC strongly support the enactment of SB 192. This will simplify the sales tax collection and remittance procedure for all Kansas companies and will level the playing field for Kansas retailers. Thank you for your time and I'll be happy to answer any questions.

About the Kansas Chamber of Commerce and Industry

The Kansas Chamber of Commerce and Industry (KCCI) is the leading broad-based business organization in Kansas. KCCI is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

KCCI is comprised of nearly 2,000 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both large and small employers in Kansas. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.



Streamlined Sales Tax System

Questions & Answers

The following Questions and Answers have been developed by the Streamlined Sales Tax Project for legislative sponsors and others involved in state legislation. For additional information, please refer to "A Lawmaker's Guide to the Streamlined Sales Tax Project: 2003, The Year of Decision." Also refer to the Streamlined Sales Tax Project web site at: www.streamlinedsalestax.org.

1. Will uniformity as proposed by the Streamlined Sales Tax Project reduce autonomy of states and their legislatures?

State legislatures still determine what is taxable or exempt and what is the rate of tax in their state. Uniformity in the Streamlined Sales Tax System requires uniform definitions and uniform administrative procedures—not uniform taxes. Some may perceive this uniformity as reduced autonomy. However, the U.S. Supreme Court (*Quill versus North Dakota, 1992*) has said that the complicated state and local sales tax systems across this country have created an undue burden on sellers. If states are unwilling to accept uniformity in definitions and administrative procedures to reduce or eliminate burdens on sellers, it is likely that Congress may impose far more stringent requirements on the states.

2. Do the simplifications go far enough to overcome past U.S. Supreme Court decisions (*Quill versus North Dakota, 1992*) which said that sales tax systems across the country are too complex to require collection from sellers with no physical presence in a state?

Only Congress can determine if the simplifications are enough for a mandate for collection. The Streamlined Sales Tax System includes dramatic simplifications in exemption processing, uniform definitions, state level administration of local taxes, a reduced number of sales tax rates, determining the appropriate tax rate, and reduced audit burdens for sellers using the state-certified technology. The System provides dramatic simplification in almost every aspect of sales and use tax collection and administration, especially for multi-state sellers.

3. Does the Streamlined Sales Tax System impede Internet development?

No. The Streamlined Sales Tax System is about simplifying the collection and administration of sales taxes for all types of sellers so that the burden of compliance is reduced for everyone. The Streamlined Sales Tax System provides an opportunity for all businesses—from Main Street to the Internet—to reduce the complexity associated with tax administration while at the same time providing an avenue for sellers to grow their businesses into new areas absent the concern that their new business structure could run afoul of state sales tax laws.

4. If Congress mandates collection of sales taxes on multi-state sellers with no physical presence in a state, is this taxation without representation.

No. The sales tax is a tax on consumers and not sellers. Also, Congress will not mandate collection unless a state has taken the necessary steps to reduce the sales tax collection burden on sellers.

5. Are states increasing taxes by taxing Internet transactions?

No. Purchases made over the Internet are taxable now—but most consumers don't know this and the current laws are almost impossible to enforce against individual consumers. Consumers must pay a complementary use tax when the seller does not collect a sales tax at the point of sale on a taxable transaction. The Streamlined Sales Tax System was created by government and businesses to enable sales tax collection with reduced compliance burdens on sellers. This is not about new taxes.

6. Will states expand their tax bases through the uniform definitions?

No. Business and government representatives jointly developed the uniform definitions to simplify tax collection and administration, not increase taxes. The definitions were designed to model current tax bases to the extent possible so that increased or decreased taxes would be minimized. To achieve the uniform definitions, some states may choose to make changes to their tax base, but the decision to do so lies solely in the hands of state legislatures.

7. How does the Streamlined Sales Tax System and related legislation help small businesses?

The Streamlined Sales Tax System and related legislation provides the following benefits to small businesses:

- Simplifies exemption processing with protection for sellers that accept exemption certificates.
- Provides one uniform tax return for all states with the elimination of local tax returns.
- Allows a small business the option to use state-certified software or a Certified Service Provider to reduce or eliminate sales tax administration burdens.
- Makes it easier for businesses to expand to markets in other states or via the Internet because all states will use the uniform definitions and administrative procedures.
- With Congressional action, levels the playing field between (1) small Main Street businesses who collect sales taxes and (2) large, multi-state businesses that are not required to collect sales taxes because they have no physical presence in a state.

8. Why don't some of the Streamlined Sales Tax System provisions take effect until January 1, 2006?

Sales tax is a significant revenue source for many states. Sales tax laws and systems are complex. Radical simplification requires time for state and local

governments to implement the changes and provide adequate notice to sellers. The Streamlined Sales Tax System allows states to simplify immediately and work toward the more difficult provisions that might affect their revenue sources.

9. Should business activity taxes be addressed at the same time as we are simplifying sales taxes?

Some are suggesting that states and Congress clarify business activity tax nexus standards (e.g., corporation income or franchise taxes) at the same time they are enacting sales tax simplifications. Business activity tax issues and sales tax simplification are separate and unrelated issues. Both taxes are complex and need more uniformity. The Streamlined Sales Tax System provides a model methodology that should be used in simplifying other taxes. This cooperative effort between multiple governments and businesses is unprecedented. Still, it would not be wise to hold up state and Congressional action on the Streamlined Sales Tax System to address business activity taxes. Business activity taxes require a deliberate effort similar to what has been done in streamlining sales taxes.

10. Should there be a federal judicial review of decisions made by the member states of the Streamlined Sales Tax System?

No. State courts have interpreted tax law for many years. The Streamlined Sales Tax Agreement between states provides adequate mechanisms to resolve disputes. Sales tax administration is a state issue. State sovereignty should be protected.

11. What are the costs to sellers if they use state certified software or a Certified Service Provider for their tax collection functions?

The Streamlined Sales Tax System provides new technology options to sellers for sales tax administration. A seller can use a Certified Service Provider (CSP) or acquire state certified software. If a seller uses a CSP, the states agree to work together to pay for the costs of the CSPs that will be selected through a combined contract. The CSPs are responsible for developing software that determines the tax application, rate and jurisdiction. The CSPs will provide the necessary software to integrate with the seller's order processing and accounting systems. The CSPs will file applicable tax returns for the sellers. A seller's tax collection burden is eliminated under this option.

The states will also collectively certify software for use by sellers. This is called a Certified Automated System (CAS). The seller obtains the CAS and will receive a compensation allowance from the states for two years for acquiring the CAS. The amount of the allowance will be based on the cost of the CSPs. The seller remains liable for filing returns and remitting the tax with a CAS.

12. What other technology features are included in the Streamlined Sales Tax System?

The Streamlined Sales Tax System includes new technology to make tax collection easier including:

- Uniform returns that can be filed electronically.

- Central registration system to provide one-stop service for voluntary collectors. The system will be eventually expanded to all businesses.
- State-approved data bases matching rates with jurisdictions. Sellers using the data bases will not be held responsible for errors in tax collection.
- A state-by-state taxability matrix that will list items and services and the taxability determination for each state. Sellers using the matrix will not be held responsible for errors in tax collection.



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TESTIMONY IN SUPPORT OF SECTIONS 2 AND 34 OF SENATE BILL 192

TO: The Honorable David R. Corbin, Chairperson
Members of the Senate Committee on Assessment and Taxation
Room 519-S

DATE: February 17, 2003

RE: Section 2 and Section 34 of Senate Bill No. 192 – Proposed legislation pertaining to (1) application of the local compensating use tax to purchases in other participating states of all tangible personal property and certain services, and (2) collection by the State Director of Taxation of transportation development district excise taxes in return for 2% of the tax revenues collect from the district.

Ladies and Gentlemen:

The City of Overland Park at this time wishes to express its support for two particular sections of SB 192:

1. Section 2 of the bill would allow the City's local compensating use tax to apply to purchases in other participating states not only of motor vehicles and boats but also to purchases in other participating states of all other tangible personal property and services that are used, stored or consumed in Kansas and that otherwise would be subject to retailers' sales tax if purchased in Kansas. The City supports this section of the bill.
2. New Section 34 of the bill would require the State Director of Taxation to collect and remit any excise tax (identical to the sales tax) that a City might impose within a Transportation Development District, and for the state general fund to be credited with 2% of all taxes collected within the district to defray the expenses of the department in administration and enforcement of the collection thereof. The City of Overland Park is working with a local developer of regional shopping malls to foster the development of a new 1.15 million square foot regional shopping mall at 135th and Metcalf in the City by creation of a Transportation Development District including the imposition of an excise tax within the district. The City is unsure how it will go about collection of the excise tax within the district since existing K.S.A. 2002 Supp. 12-17,135 requires the City to administer and collect the tax. New Section 34 of SB 162 would require the State Director of Taxation to collect and remit the tax in return for 2% of the revenues collected. The City supports this section of the bill as well.

Thank you for your consideration.

A handwritten signature in black ink that reads 'Robert J. Watson'.

Robert J. Watson
City Attorney

RJW/rjw

Senate Assessment & Taxation
2-17-03
Attachment H