

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:40 a.m. on May 1, 2003, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Joan Wagnon, Secretary, Kansas Department of Revenue  
Marlee Carpenter, Kansas Chamber of Commerce & Industry  
Richard Cram, Kansas Department of Revenue  
Mark Beshears, Sprint  
T.C. Anderson, Kansas Society of Certified Public Accountants

Others attending: See attached list.

Senator Corbin explained that the purpose of the meeting related to negotiations in a conference committee wherein at least 6 of 18 items presented by the House members of the committee included bills which were heard by the House Taxation Committee but were neither passed out of Committee nor passed by either chamber. House members contended that the bills were conferencable because they had been given a hearing. Senator Corbin noted that the policy of the Senate is not to put items in conference committee that have not passed at least one chamber. In order for the Senate to prepare a counter proposal to present when the conference committee meets again for the negotiation process, it was determined that the Senate Assessment and Taxation should discuss the following bills which were heard by the House Taxation Committee:

**HB 2411–Taxation; relating to state agencies; collection and remittance of sales tax by state contractors**

**HB 2430–Taxation; relating to interest on overpayments; periods of limitation on refunds or credits**

**HB 2449–Income taxation; relating to income tax credits; net operating losses.**

Senator Corbin went on to explain that, if the Committee so desires, the language in **HB 2411**, **HB 2430**, or **HB 2449** could be amended into the following bill currently in the Senate Assessment and Taxation Committee:

**HB 2287–Property tax; classification of and exemption for property used partially for bed and breakfast purposes.**

He explained that the **SB 2287** concerns the fact that some counties currently have chosen to classify bed and breakfast property as commercial property. To eliminate the inconsistency in classification, the bill provides that if a bed and breakfast property has five or less rooms and the proprietor lives on the premises, the property will not be classified as commercial property but rather as residential.

Senator Corbin opened the discussion on **HB 2411** and called upon Joan Wagnon, Secretary, Kansas Department of Revenue, to summarize the intent of the bill. She explained that the Department requested the bill to establish a mechanism to collect use tax due and owing, which is often difficult to collect on purchases from out-of-state vendors. Because vendors are the most important group in the chain of collectors of use tax, the bill provides that a vendor who wants to sell goods in the state must be a registered retailer in Kansas and collect state sales taxes. She explained further that the bill provides that the state and local units of government must put in their purchasing contracts that vendors from whom they purchase goods will collect the use tax for the state. She emphasized that the bill does not establish a new tax but provides an enforcement mechanism for an existing tax. She commented that several other states have passed similar legislation to establish a business policy which requires vendors to cooperate with government entities in the collection of use taxes.

Marlee Carpenter, Kansas Chamber of Commerce and Industry (KCCI), testified in support of **HB 2411**, calling attention to her written testimony. (Attachment 1) She noted that KCCI supported the bill when it

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was heard in the House Taxation Committee and pointed out that there were two nexus bills, HB 2411 and HB 2459. However, KCCI did not support HB 2459. For the Committee's information, Senator Corbin explained that HB 2459 was incorporated in HB 2416 and is in conference.

Senator Allen asked if a fiscal note on HB 2411 had been prepared. In response, Secretary Wagnon noted that it would be difficult to estimate at this point in time, but collection of the use tax would grow in time. Staff noted that the prepared fiscal note indicates "positive but unknown."

Senator Corbin opened the discussion on HB 2449 and called upon Marlee Carpenter, KCCI, who testified in opposition to the bill. She explained that KCCI opposes the removal of the refundability of income tax credits because the concept is especially important when companies do not have any taxable income. (Attachment 2)

Senator Corbin called the Committee's attention to a memorandum on the fiscal note for both HB 2449 and HB 2430. He pointed out that the fiscal note on HB 2449 for Fiscal Year 2004 is \$9 million and that it decreases to zero by Fiscal Year 2007. (Attachment 3)

Richard Cram, Kansas Department of Revenue, explained that HB 2449 identifies the tax credits that are currently refundable and changes those provisions so that they are carried forward. In other words, a business must have a tax liability before it can claim a credit. The credits to which it applies are the telecommunications credit (K.S.A. 79-32-210), the disabled access credit, the child day care system credit, small employer health insurance credit, community service contribution credit, and the business machinery and equipment credit for property taxes. He noted that the largest portion of the fiscal note is attributable to the business machinery and equipment tax credit. He confirmed that the bill puts no limitation on the carry forward time.

Senator Donovan commented that the legislative intent for all of the refundable credits was to level the playing field for business entities in the state when competing with businesses in other states. In his opinion, a change in policy is very unwise. In response, Secretary Wagnon noted that the primary purpose for the introduction of the bill was to clean up the classification amendment.

Senator Corbin opened the discussion on HB 2430, noting that the fiscal note on it is \$23.6 million for Fiscal Year 2004 and that it decreases to \$10 million by Fiscal Year 2008. He called upon Mr. Cram to summarize the bill. Noting that the Department requested the bill, Mr. Cram discussed Sections 1 through 4. Section 1 deals with reducing the interest rate on tax refunds to a flat 2 percent. Under current law, both refunds and assessments are subject to an interest rate that adjusts each year based on the federal rate, and the state interest rate is 1 percent above the federal rate. Under current law, the state rate is 7 percent for 2003. Mr. Cram noted that the interest rate on assessments would remain as it currently is. He explained that Sections 2 and 4 deal with the statute of limitations on refund claims for income tax and sales tax. Under current law, there is a three year statute of limitations. The bill would reduce the refund period to one year. Mr. Cram noted that another provision in Section 3 or 4 deals with when the interest begins to accrue on a refund. Under current law, the Department has two months to process a return before interest is owed on a refund. The bill allows the Department six months to process a return before interest would be due on an income tax refund. He noted that the bill should be amended to include sales tax as well. He went on to say that the bill also clarifies that interest begins to accrue on an amended return no earlier than the date the Department gets the amended return filed.

Senator Oleen pointed out that the Joint Rules state that measures that have not passed one chamber or the other cannot be included in conference committee negotiations. Senator Corbin recalled that conference negotiations last year included bills not passed by either house. In response, Senator Oleen emphasized that it was reiterated to Republican and Democrat leadership this year that if a measure has not passed one house, it is not to be "force fed" to the House or Senate this year. She observed that, even though the bills under discussion were heard in the House committee, no one knows how the committee stands on them. Senator Corbin reiterated that the purpose for the meeting was to strengthen the argument against the House proposal when presenting a counter offer when returning to conference. Senator Oleen strongly emphasized that the

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procedure proposed by House conference committee members "is not the way to go about tax policy" because it violates the rules.

Mark Beshears, Sprint, testified in opposition to **HB 2430**, contending that it is "one of the worst pieces of tax policy" he has seen. He noted that there is a mechanism in current law which addresses tying the interest rate to federal funds. He believes that the problem is that the Department calculates the interest based upon the previous year, creating a gap in the interest rates between the real interest rate and a previous interest rate. In addition, he believes that limiting the statute of limitations to one year is not acceptable. In his opinion, the bill indicates that Kansas is not very open to businesses.

Secretary Wagnon informed the committee that sales tax refunds paid by the state last year totaled \$14 million. She explained that the Department brought the bill to the Tax Committee for the purpose of looking at a significant problem and determining whether or not the Department's policies encourage or discourage the problem. She observed that, unfortunately, the bill did not get discussed, debated, and worked. She acknowledged that some work needs to be done on the bill. She explained that the bill was meant to address the refund aggregators who come to the state and go back in time, principally with regard to the sales tax.

Senator Corbin called attention to the written testimony in opposition to **HB 2430** submitted by Marlee Carpenter, KCCI. (Attachment 4)

Senator Corbin began a discussion regarding **SB 115** which reduced the members of the Board of Tax Appeals (BOTA) from five to three. He noted that, after the bill passed, the House Appropriation Committee included a fee provision for BOTA. He called upon Tony Folsom, BOTA, to explain further. Mr. Folsom explained that the Budget Department determined that BOTA should assess filing fees and that approximately \$300,000 could be raised from the fees in Fiscal Year 2004. The House Appropriation Committee put language in **SB 115** that would give BOTA authority to pass regulations allowing the assessment of filing fees. The only limitation was that BOTA could not put a fee on single family residential filings. He informed the Committee that, after the House Appropriation Committee placed the provision in **SB 115**, it was sent to floor of the House. It was then transferred back the House Taxation Committee where it remains. Senator Corbin noted that the BOTA filing fee is another issue that never passed either house.

Senator Corbin began a discussion of the customized software taxation issue, noting that the fiscal note on it is \$14.8 million. Mr. Beshears stood to explain that the issue came up last year at the end of the session and that it imposes a tax for the first time on the service of altering or maintaining custom computer software. He noted that the drafting of the bill had some statutory inconsistencies regarding tangible personal property. In addition, he pointed out that the House, Senate, and Joint Rules were violated in that the provision was never discussed in a committee hearing in either house nor was it ever passed out of either house. Mr. Beshears observed that the tax was added at the last hour in order to fill some budget gaps. He noted that it has caused problems not only with purchasing software but also with how the software is sourced for taxation. Therefore, the Kansas Society of Certified Public Accountants requested the introduction of **HB 2322** during the 2003 session, and it was heard in the Taxation Committee. The bill reinstates the exemption for custom computer software. On behalf of Sprint, Mr. Beshears recommended that the exemption be applied prospectively.

T.C. Anderson, representing the Kansas Society of Public Accountants, stood in support of Mr. Beshears recommendation. In addition, he requested that the provisions in **HB 2322** as it relates to the issue under discussion be incorporated in the Committee's proposal.

Following brief comments by Senator Corbin regarding **SB 2287**, Senator Lee moved to amend **HB 2287** by changing the number of rooms from five to seven, seconded by Senator Goodwin. The motion carried.

Senator Donovan moved to incorporate the language in **HB 2411** and the language in **HB 2322**, as suggested by Mr. Beshears, into **HB 2287** and to recommend **HB 2287** favorably for passage as amended, seconded by Senator Lee. The motion carried.

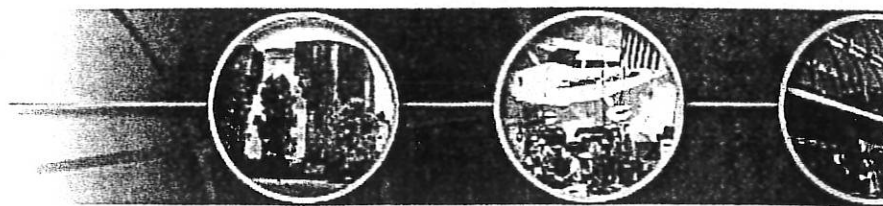
The meeting was adjourned at 11:40 a.m.

SENATE ASSESSMENT AND TAXATION COMMITTEE  
GUEST LIST

DATE: May 1, 2003

NAME	REPRESENTING
TO Pederson	KSCPA
MARIK Beshears	Sprint
Mike Murray	Sprint
Maureen Goppinger	KCCI
Sharon Cook	Hallmark
Jotalee Bregis	WIBA
Paulie Clark	Hallmark
Ron Caches	GABA
BILL SNEED	Amazon.com
Susan Mahoney	SBC
Shirley Jean Smith	KMHA
Lisli Kaufman	KFB
Christy A Caldwell	Topeka Chamber of Comm.
STEVE KEARNEY	GOODYEAR
Andy S Graw	Goodyear Tires & Rubber
Scott Kenefake	Ks Assoc. of Counties
Tony Folsom	BOTA
Lucky DeVries	Rottman, DeVries & Nothorn
Steve Johnson	Kansas Gas Service





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**Legislative Testimony - HB 2411**

March 19, 2003

Testimony before the House Taxation Committee  
By Marlee Carpenter, Director of Taxation and Small Business

Chairman Edmonds and members of the Committee:

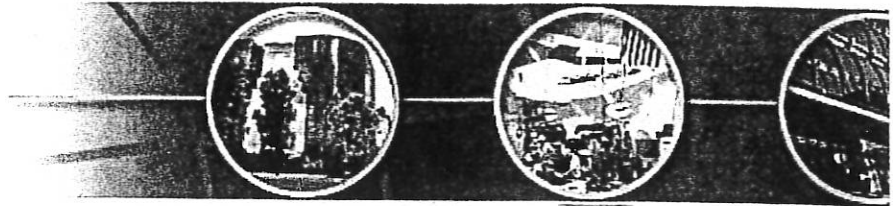
I am Marlee Carpenter with the Kansas Chamber of Commerce and Industry testifying in favor of HB 2411. This bill requires any vendor that does business with the state of Kansas be a registered retailer for sales tax collection purposes. Currently, when the state purchases goods from these vendors they do not collect sales tax on sales to the state because of the sales tax exemption in place—this would not change. However, when these vendors sell products to other consumers, businesses or individuals, this bill would require them to collect and remit the sales tax. Under current law, a use tax applies to items bought from vendors without nexus with the state. The use tax is very hard to collect. The proliferation of this problem—internet and catalogue sales—is the genesis of the streamlined sales tax project, which we are hopeful will pass this year. This bill simply requires that those who choose to do business with the state of Kansas register as retailers for sales tax collection purposes. This would bring in additional revenue for the state, revenue that is due but is being uncollected at the current time.

Thank you for your time and I'll be happy to answer any questions.

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**Legislative Testimony - HB 2449**

March 21, 2003

Testimony before the House Taxation Committee  
By Marlee Carpenter, Director of Taxation and Small Business

Chairman Edmonds and members of the Committee:

I am Marlee Carpenter with the Kansas Chamber of Commerce and Industry testifying in opposition to HB 2449. The Kansas Chamber opposes the removal of the refundability of income tax credits. This concept is especially important when companies do not have any taxable income. In a slumping economy when profits are down, companies may not have any taxable income. Refundability of tax credits reimburses the company for tax credits rightfully earned that taxable year, even if there is no taxable income.

The income tax credit for property taxes paid on business machinery and equipment is addressed in section 6 of the bill. The Kansas Chamber has fought for many years to enhance this credit to offset the high property taxes on machinery and equipment. If refundability of this credit is removed, the incentive the legislature envisioned when it passed the income tax credit is removed—to reduce the burden of property taxes paid on business machinery and equipment. Even if a business has little or no taxable income, they must still pay the high property taxes on machinery and equipment and then are unable to receive the relief intended. If the refundability aspect is removed, relief is not always guaranteed.

KCCI opposes HB 2449 and requests the committee not act upon this issue. Thank you for your time and I'll be happy to answer any questions.

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## MEMORANDUM

April 24, 2003

To: Alan Conroy  
 From: Chris W. Courtwright  
 Re: Ongoing Fiscal Impact of HB 2430 and HB 2449

This memo is to report to you as to my phone conversation of moments ago with Director of Taxation Steve Stotts regarding the fiscal note on HB 2430 and HB 2449. As you may know, these pieces of legislation would change certain refundable tax credits to instead make them "carry-forwardable"; and would reduce the interest rate paid on refunds as well as reducing the current 3-year statute-of-limitations on filing for refunds to one year. (These fiscal notes assume that the final two sections of HB 2430, which would have sought to eliminate some \$35 million in refunds attributable to cases currently in litigation, would be removed from the bill.)

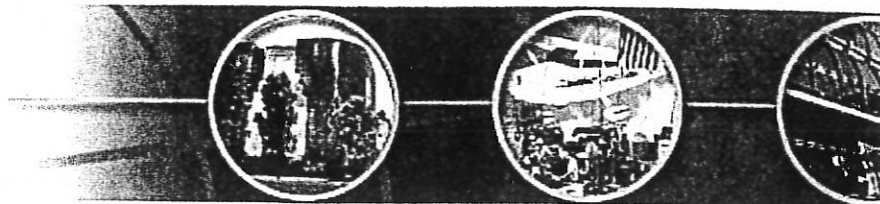
These are very rough and unofficial estimates at this point in time. The Department is working on getting us something more official.

(\$ in millions)

	FY 04	FY 05	FY 06	FY 07	FY 08
HB 2430	\$23.6	\$20.0	\$15.0	\$12.0	\$10.0
HB 2449	\$9.0	\$5.0	\$2.0	\$0.0	\$0.0
Both Bills	\$32.6	\$25.0	\$17.0	\$12.0	\$10.0

*Senate Assessment & Taxation  
 5-1-03 Attachment 3*





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**Legislative Testimony - HB 2430**

March 21, 2003

Testimony before the House Taxation Committee  
By Marlee Carpenter, Director of Taxation and Small Business

Chairman Edmonds and members of the Committee:

I am Marlee Carpenter with the Kansas Chamber of Commerce and Industry testifying in opposition to HB 2430. This bill sends the wrong message to the Kansas business community. It enacts several anti-business and anti-taxpayer measures.

We believe that HB 2430 would preclude refund claims for sales and use tax exemptions and exclusions. This would put an end to legitimate refund claims for taxes paid on transactions that were never intended to be taxed under the sales and use tax statutes. We also believe this bill would preclude refund claims for income tax credits unless filed on the original income tax return. This includes income tax refunds under the research and development income tax credit and the HPIP income tax credit. For example, companies may be in the process of talking with the Department of Commerce and Housing about qualifying for the HPIP credit but have not been approved. They file their income tax form without the tax credit, but then when they are approved file an amended return requesting a refund.

HB 2430 also shortens the statute of limitations for refunds to one year while leaving the statute of limitations for the Department of Revenue to audit the taxpayer at three years. We believe that this is unfair to the taxpayer and if an overpayment is discovered during the audit process the statute of limitation would cut off the valid refund claim. In addition, HB 2430 would require interest for the underpayment of tax to be set at one rate, but the interest for the overpayment of taxes set at the 2% rate.

This bill, if enacted, would put into statute one set of rules the Department of Revenue must follow for an audit and another set of rules a taxpayer must follow for a refund claim. This is unfair to the taxpayer. Kansas businesses want to follow the laws and not be assessed penalties by the Department of Revenue. This penalizes the taxpayer and cuts off legitimate refund claims.

The Kansas Chamber requests that you not act upon HB 2430. Thank you for your time and I'll be happy to answer any questions.

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