

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on February 19, 2004 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisors of Statutes
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Bob Corkins, Free States Center
Rebecca Rice, The Lindsborg News Record
Karl Peterjohn, Taxpayers Network
Marlee Carpenter, KCCI
Randall Allen, Kansas Association of Counties
Erik Sartorius, City of Overland Park
Don Moler, Kansas League of Municipalities

Others attending:

See Attached List.

Chairman Edmonds opened the meeting for bill introduction.

Representative Thull requested the introduction of a bill that would create a tax exempt status for assisted living units.

With no objections, this bill will be accepted for introductions.

There were no further bill introductions and the Chairman opened the meeting for continuation of public hearings on **HB 2700** and **HB 2599** recognizing Representative Huntington who stood to bring to the committees' attention written testimony from Bank News Publications, a constituent from her district. Their testimony stated that the destination sales taxes are an impediment to the company's ability to continue to grow, hire and contribute to the tax base of Kansas. (Attachment 1)

Representative also stood to bring to the committees' attention written testimony from Mayor Michael Copeland of Olathe Kansas. In this testimony they commended Representative Siegfried for all that work that he has done for the citizens of Olathe and requested that he encourage the committee to support the legislation that would delay the implementation of SST (Streamlined Sales Tax) in Kansas until such time as Congress acts on the taxation of internet sales. (Attachment 2)

Chairman Edmonds also called to the committees' attention written testimony from Steve DelBianco, The NetChoice Coalition of Washington, DC in support of both **HB 2700** and **2599** (Attachment 3) as well as written testimony from Meredith Strobridge of Internet Alliance, Montpelier, VT also in support of both **HB 2700** and **HB 2599** (Attachment 4)

Art Brown of Mid America Lumber, Wichita, Kansas and Natalie Bright from the Voice of Independent Business, Wichita, Kansas were not present to give their testimony as scheduled, however, it is recorded in the minutes. (Attachments 5 and 6)

Bob Corkins, Executive Director of Freestate Center for Liberty Studies, delivered testimony in support of both **HB 2700** and **HB 2599**. His organization is a nonpartisan, nonprofit research firm advocating the constitutional principles of liberty and limited government. They have devoted considerable time to studying the SSTP (Streamlined Sales Tax Project). It is there opinion that the wiser move would be to enact either **HB 2700** or **HB 2599** for a pro-economic growth policy that provides a far more reliable estimate of

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on February 19, 2004 in Room 519-S of the Capitol.

government revenues. (Attachment 7)

Next to address the committee was Rebecca Rice, Co-Owner of The Lindsborg News-Record in support of either **HB 2700** or **HB 2599**. Ms. Rice notes that their tax collections are typically \$260 to \$280 per month and costs about \$160 to \$180 dollars per month to produce a report to submit the monthly sales tax. They estimate they spent at least a full week, involving several different people, modifying their financial software to produce the necessary information for the Department of Revenue report. It is there argument that this will eventually cost the state more than is collected. Ms. Rice also opined that the cost of losing 16 hours a month, losing productivity, losing ads that are not being sold and copy not being written significantly removes labor and resources from the economy for the sole purpose of remitting taxes to the state, robs the state's economy. (Attachment 8). Ms. Rice also submitted for review a copy of the Kansas Retailers' Sales Tax Return ST-36. (Attachment 9)

The Chairman acknowledged Karl Peterjohn, Executive Director of Kansas Taxpayers Network of Wichita, Kansas in support of **HB 2599**. Mr. Peterjoin voiced his opinion that Kansas' misadventures with the streamlined sales tax statues have already hurt the state. The many tax jurisdictions in the State of Kansas is a major problem for effectively going to a streamlined sales tax. In his opinion, Mr. Peterson, stated that if **HB 2700** cannot be enacted then mitigate the damage by enacting **HB 2599**. (Attachment 10)

Marlee Carpenter, Vice President Government Relations for The Kansas Chamber of Commerce and Industry (KCCI) came before the committee in support of **HB 2599** stating that they support the SSTP (Streamlined Sales Tax Project), however destination sourcing which is a major part of SSTP is of great concern to Kansas retailers and is not working for the State with its' more than 750 sales tax jurisdictions. Collection of the sales taxes has become burdensome and expensive. KCCI continues to support SSTP and a level playing field, but also supports a delay in the enactment of the destination sourcing provisions. (Attachment 11)

In opposition to **HB 2700** was Randall Allen, Executive Director of Kansas Association of Counties. This organization applauded the Kansas Legislature for passing legislation to modernize and streamline the sales tax system and level the playing field among Main street, mail order, and internet retailers. They strongly support the basic premise of the SSTP (Streamlined Sales Tax Project), and strongly urge the Legislature to stay the course on SSTP and support the Department of Revenue's efforts to mitigate the most severe problems associated with its implementation. (Attachment 12).

Eric Sartorius testified for The City of Overland Park, Kansas in opposition to both **HB 2599** and **HB 2700**. In their testimony the City of Overland Park believes that passage of the SSTP by the 2003 Legislature was the correct long-term policy choice. They stated they are confident that the Legislature, Department of Revenue, retailers, and local governments can address implementation issues in a manner that does not end the State's participation in the SST. (Attachment 13)

Testifying on behalf of the League of Kansas Municipalities was Don Moler. The League is in opposition to both **HB 2599** and **HB 2700**. Internet sales have grown immensely and the League continues in its' belief that we must have a system which is equitable for those businesses who operate from brick and mortar locations as well as those operating via the internet. They support the SSTP including a local compensating use component. It is also their feeling that the Department of Revenue should work with businesses to make the transition to destination-based sourcing as smooth as possible. In addition they urge Congress to take action as soon as practicable to pave the way for mandatory collection of sales and use taxes on remote sales. (Attachment 14)

Completing the list of conferees wishing to testify on either **HB 2599** or **HB 2700** and with no one further wishing to testify, Chairman Edmonds closed the hearing on those bills.

The Chairman made the announcement that action would be taken on one of the bills on Friday, February 20, 2004 at 9:00 a.m. in Room 519-S.

Meeting was adjourned.

BankNews Publications

5115 Roe Boulevard, Suite 200 • Shawnee Mission, KS 66205-2368 / P.O. Box 29156 • Shawnee Mission, KS 66201-9156
800-336-1120 • 913-261-7000 • Fax: 913-261-7010 • www.banknews.com

February 16, 2004

Re: Hearing on Destination Sales Tax

To Whom It May Concern;

I own a small publishing company, located in Roeland Park, Kansas. Bank directories and subscriptions are a substantial part of our business. The bulk of our sales are generated in response to direct mail solicitations for the *Kansas Bank News Directory*, published twice per year and subscriptions to *BankNews Magazine*, a monthly periodical.

We generally do not send an invoice for these products and therein lies the problem. *Kansas Bank Directory* customers return a completed order form along with their payment of \$28.00 per book, plus our location's tax rate. Kansas subscribers to *BankNews Magazine* send payment, including our location's applicable sales tax, with their subscription order.

I am not aware of any software program would enable a business to meet tax compliance for all Kansas tax jurisdictions. If one exists, it would help those businesses who upon receipt of an order could then send invoice with destination's appropriate rate, receive payment, and follow with the delivery of product.

However, for periodicals paid in response to direct mail rather than invoice – large volume, small ticket price and delivered to virtually all taxing jurisdictions - this tax policy is a heavy regulatory and financial burden.

For example, Sunflower Bank in Salina responds to direct mail offer by returning order form and monies for two directories. Upon our receipt of payment for these directories, would we send an invoice for an additional \$0.085 for this tax jurisdiction's destination tax rate? ... or \$.0158 for a bank in Mulvane?... or \$.121 for Fort Hayes? For every directory we receive payment on, would we assume our customers would submit their proper destination tax amount? It is simply not economically sound to invoice each customer their tax jurisdiction's rates for these amounts when the simple act of posting the invoice would cost my corporation \$0.37 per sale and my customer the same.

A message from Governor Seblius on September 4, 2003 states:

HOUSE TAXATION

Attachment 1

Date 2-19-04

"Small business is the backbone of the Kansas economy. Those businesses are supposed to be the beneficiaries of these (destination tax) new rules."

I am a small business. I do collect sales tax for our publications. I do submit these taxes to the state of Kansas. Do I see my company as a beneficiary of these new rules? No. Destination sales taxes are an impediment to my company's ability to continue to grow, hire and contribute to the tax base of Kansas.

Sincerely,

**Pamela D. Baker
President
Bank News, Inc.**



City of Olathe

February 18, 2004

The Honorable Arlen Siegfried
State Representative
State Capitol, Room 182 West
300 S.W. Tenth Avenue
Topeka, KS 66612-1504

Dear Arlen:

I would like to commend you for all the work that you are doing for the citizens of Olathe, and I applaud your efforts to continually do what is in their best interests. In particular, I would like to thank you for your efforts to delay implementation of SST (Streamlined Sales Tax) legislation.

As you know, many cities derive funds to pay for things such as police and fire protection from sales tax, and we recognize that the growth in non-taxable internet sales could force cities to look for other revenue sources. Federal efforts to collect that sales tax would allow us to capture that revenue. Unfortunately, what has happened in Kansas is proving to be significantly detrimental to our economic health, and there is no assurance that benefits will be seen in either the short or long term.

I specifically mentioned this issue at our City Council meeting last night. As you are aware, the voluntary implementation of SST in Kansas has caused a significant loss of revenue in Olathe's General Fund. That, compounded with the loss of demand transfers and no guarantee of taxation of internet sales, causes a tremendous problem in continuing to provide the affordable level of service that our citizens have come to expect.

Cities like Olathe that have sacrificed to attract businesses to create jobs and economic opportunities for all of Kansas are now at a disadvantage, while communities that choose not to open themselves to those businesses reap rewards.

The consensus of our City Council is to support legislation that would delay the implementation of SST in Kansas until such time as Congress acts on the taxation of internet sales. Your help in this effort is appreciated.

Thank you again for your service to our community.

Warmest regards.

Very truly yours,

Michael Copeland
Mayor

The NetChoice Coalition

1413 K St NW, 12th Floor
Washington, DC 20005

www.netchoice.org

866-259-3800

Net Choice

Convenience

Choice

Commerce

February 16, 2004

Rep. John Edmonds
Kansas Statehouse
300 S.W. 10th Ave. Room 171-W
Topeka, KS 66612-1504

Subject: **Sales Tax Simplification in Kansas: *Not So Fast—It's Not That Simple***

Dear Chairman Edmonds:

The NetChoice Coalition supports amendments to repeal or delay Kansas' implementation of the Streamlined Sales Tax Project (SSTP). Although it is termed "Tax Simplification," Kansas has seen first-hand that SSTP is anything but simple. Until Congress mandates SSTP nationwide, your state's implementation efforts will not raise enough new revenue to justify the burdens on Kansas businesses.

Proponents of SSTP adoption relied on a 2001 University of Tennessee study to claim that Kansas would lose \$265 million in sales taxes on internet sales by 2003. This claim was based on the wild assumption that e-commerce would grow 40% per year, while actual growth has been just 12%.

Last year, the Direct Marketing Association estimated that Kansas' lost sales taxes from e-commerce are just one-tenth of the Tennessee study forecast. While any new revenue helps the state's budget, these lower figures don't justify the rush to impose SSTP without a better understanding of the impact on Kansas businesses.

Moreover, no significant amounts of lost sales tax will ever be realized unless and until Congress forces sellers everywhere to collect and remit to remote jurisdictions. While two SSTP bills were introduced in Congress last fall, these bills differ markedly from the version adopted by Kansas in 2003, and it will take some time to reconcile these differences. In the meantime, businesses in Kansas should not be forced to shoulder the burdens of new sourcing rules.

Please pass either HB 2599 or HB 2700, and acknowledge what Kansas' businesses already know about sales tax simplification: *Not so fast—It's not that simple.*

For citations and a concise paper on SSTP, please visit our website at www.netchoice.org

Sincerely,



Steve DelBianco
Executive Director, The NetChoice Coalition
703-615-6206

About NetChoice: *NetChoice is a coalition of trade associations, e-commerce businesses, and online consumers, all of whom share the goal of promoting convenience, choice and commerce on the Net. Members include the Association for Competitive Technology, the Information Technology Association of America, the Electronic Retailing Association, Orbitz, eBay, VeriSign, and eRealty.*

HOUSE TAXATION

Attachment 3

Date 2-19-04

From: "Meredith Strobridge" <merediths@kse50.com>
To: <carold@house.state.ks.us>
Date: 2/17/04 8:27AM
Subject: Testimony in support of HBs 2599 and 2700

Ms. Doel,

Attached is a letter of testimony in support of HB 2599 and HB 2700, bills scheduled for a hearing today in the House Taxation Committee. I apologize for not sending this letter in hard copy and for getting it to you so late. I hope that this does not cause you too much trouble. Our offices were closed yesterday for the President's Day Holiday.

If you have the time, please let me know when you have received this email.

Best,

Meredith

Meredith Strobridge
Kimbell Sherman Ellis
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Montpelier, VT 05602
802-229-4900 x112
merediths@kse50.com

HOUSE TAXATION

Attachment 4

Date 2-19-04

1111 19th Street, NW, Suite 1180
Washington, D.C. 20036
Tel: 202-861-2476
Cell: 202-329-0017
Email: emilyh@internetalliance.org
Web: www.internetalliance.org

Rep. John Edmonds
Chair, House Taxation Committee
Kansas Statehouse
300 S.W. 10th Ave., Rm. 171-W
Topeka, KS 66612-1504

February 17, 2004

Re: Support for House Bills 2599 and 2700

Dear Chairman Edmonds:

The Internet Alliance is a national organization of consumer Internet companies - companies providing goods and services to consumers via the Internet. The Internet Alliance's mission is to build consumer confidence and trust in the Internet so that it may become the leading global marketing medium of this century. I am writing on behalf of the Internet Alliance to express our support for House Bill 2599 and House Bill 2700, both of which reverse implementation of the controversial sales tax allocation rules ("destination sourcing") associated with the Streamlined Sales Tax Project.

As you know these rules have created great administrative difficulty for Kansas merchants. The Internet Alliance is particularly concerned that the costs to merchants of such a system, both now and with full future nationwide implementation, will not be insignificant and will have to be passed on to consumers in higher prices. Although the Streamline Sales Tax Project may be well intentioned, it has yet to show that its efforts will result in the nationwide sales tax administration system that is simple, streamlined, and cost-free to Kansas merchants, as was originally promised by the promoters of this system. Surely it makes sense to delay imposing administrative difficulties on Kansas merchants until this speculative system has proved that it can meet the promises of its proponents.

We strongly urge that the Taxation Committee support both House Bill 2599 and House Bill 2700.

Sincerely,

Emily Hackett
Executive Director



MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY

House Taxation Committee

February 17, 2004

HB 2700

Mister Chairman and members of the House Taxation Committee, my name is Art Brown representing the Mid-America Lumbermens Association. We represent the independent retail lumber and building material dealers in the State of Kansas and appear before you today as proponents of House Bill 2700.

I would be remiss if I did not thank the Chairman for allowing us this opportunity to present our concerns about the current destination source sales tax policy as it is currently written. It is deeply appreciated.

I believe after hearing testimony from our prior members that it is evident that the challenges brought about with this tax policy are costly, ineffective, and an obstacle to the efficiency needed to run these businesses on a daily basis. The much-retold story about how this policy became law and thus foisted on the business community is well documented. The real issue now is not that this law was passed late at night without full knowledge

HOUSE TAXATION

Attachment 5

Date 2-19-04

638 West 39th Street • P. O. Box 419264 • Kansas City, Missouri
800-747-6529; 816-561-5323 • Fax: 816-561-1991 • E-Mail: mail

A PROUD MEMBER OF THE NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION

of its ramifications, what is really being scrutinized is whether any corrective action will be taken when an opportunity presents itself to do so. HB 2700 is such a vehicle for this opportunity.

As you have heard, this policy is a significant cost driver to many of our members. As any business owner will tell you, when you increase the costs of doing business, job creation and stability are in jeopardy, use of discretionary funds for the community are cut back or eliminated, another barrier is put into place to compete in the open market, and in some cases, the survival of the business itself is called into question. This law in its present form does nothing but tighten the grip around the goose that lays the golden eggs.

I have to think that everyone on this Committee has heard from their constituents about the problems this policy has created. It is apparent something is very wrong and a remedy needs to be found to make it workable and economically feasible to work in our day-to-day business. Occasionally there are times that legislation passed out of this one square city block of real estate in Topeka does not translate into what is intended in the 81,000 plus square miles of our State. This law is just such an example.

This bill gives you the legislature a chance to scrap this law; receive some input from impacted parties, and come out with a better product that could work to the same end and not be so onerous to the small business community. Our recommendation would be a through interim study for just such a purpose. By passing this bill, such an opportunity could be pursued. Last fall, the University of Texas beat the University of Nebraska very handily in a football game between the two schools. In a subsequent interview after this game, one of the Texas players was asked about how they obtained such a success against the Nebraska team. His response was that “we shoved it down their throats until they liked it.” We get the distinct feeling that if something isn’t done to correct this situation as it now exist, we will have no choice but to believe that is how the legislature feels about this issue—that it will be shoved down our throats until we like it. No one has to feel this way if HB 2700 is voted out of Committee and sent on its way for passage out of the House of Representatives. I thank you for this opportunity to visit with you today and will stand for any questions or comments.



Wichita Independent Business Association

THE VOICE OF INDEPENDENT BUSINESS

Testimony in favor of
HB 2599
Submitted to the
House Taxation Committee
February 17, 2004

Chairman Edmonds and Honorable Committee Members,

I am Natalie Bright and I am appearing on behalf of the Wichita Independent Business Association (WIBA) in favor of HB 2599. As all of you are aware, implementation of Destination Sourcing has been very burdensome for Kansas retailers. Many WIBA members have struggled with its implementation because it has taken a tremendous amount of administrative time and effort which equates to a considerable amount of cost in order to implement the tracking system required to comply with Destination Sourcing. In addition, several of our members have invested significant dollars in having to purchase new computer systems and software to meet the demands of the new law.

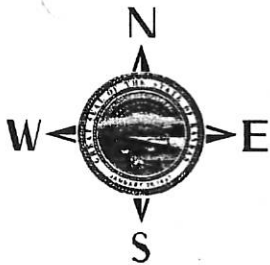
Due to the hardships Destination Sourcing has had on our retail members, WIBA has taken the official position that it is not necessary to implement the Streamline Sales Tax Project (SSTP) laws until such a time as the federal government actually places an Internet Sales Tax into effect or rules interstate commerce may be taxed. WIBA recommended in late August of last year that a bill be introduced to place the implementation of SSTP into abeyance until six months following the date the federal government authorizes collection of state sales tax on interstate commerce transactions. Additionally, WIBA recommended the State maintain origin sourcing for Kansas businesses shipping to Kansas destinations and if that is not possible then the 751 Destination Sourcing codes should be reduced to one statewide tax or at a minimum, one tax for each County.

While the members of WIBA remain evenly split on whether sales tax should be collected on items purchased via the Internet or catalogue, they are clear that they support the delay of the implementation of destination sourcing in Kansas today. Therefore, on behalf of the members of WIBA, I respectfully request that you support the passage of HB 2599.

Thank you for the opportunity to appear before you today. I will stand for questions.

415 S. Main Street / Wichita, KS 67202-3719
316-267-8987 / 1-800-279-9422 / FAX 316-267-8964 / E-mail: info@wiba.org / Web Site: www.wiba.org

HOUSE TAXATION
Attachment 6
Date 2-19-04



Freestate Center for Liberty Studies

827 S.W. Topeka Blvd., Topeka, KS 66612
785-233-5157 ♦ ksfreestate@sbcglobal.net

February 16, 2004

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The Hon. John Edmonds, Chair
and House Taxation Committee
Kansas Statehouse
300 S.W. 10th Ave., Room 171-W
Topeka, KS 66612-1504

Testimony in support of HB 2700 and HB 2599

Honorable Chair and Members of the Committee,

My name is Bob Corkins, director of the Freestate Center, a nonpartisan, nonprofit research firm advocating the constitutional principles of liberty and limited government. Our organization has devoted much time to studying the Streamlined Sales Tax Project and destination-sourcing of sales tax. Although there are many policy arguments we could dive into for opposing internet sales tax overall, I'll concentrate on the sourcing question after making one observation. Internet transactions could be made subject to sales tax without the use of a destination-sourcing rule, but for political reasons we believe that will never happen. If there is no destination-sourcing rule applied nationwide, internet sales tax is highly unlikely.

The Freestate Center's most pressing concern is that SSTP advocates, both nationally and at the state level, are executing deplorable circumvention tactics with the U.S. Constitution. The national strategy is this: sidestep the Commerce Clause barrier to internet sales tax by getting enough states to make their sales tax laws more uniform. Downplay the value of state sovereignty. Downplay the Constitution's design for states to be the laboratories of social policy change. Discourage states from competing to have the lower tax burden versus one another. That is the SSTP plan. If enough states (and who knows how many will be "enough"?) enact uniform sales tax rules, there will be no undue burden on interstate commerce from taxing internet sales.

Kansas' Executive Branch, being among these SSTP advocates, is similarly showing little respect for its constitutional duty to enforce state law. Destination-sourcing is an extremely troublesome and expensive rule to implement for both the state and retailers, and it has been Kansas law for over seven months. The Governor has said to complaining merchants "if I were you, I'd collect sales tax the way you always have and send it in," adding that if any customer questions the tax rate applied "just tell them the governor said to do it that way." Our Secretary of Revenue, despite making an address-based tax rate search publicly available, has recently said KDOR's goal is to begin enforcing the law, possibly starting in July. But even then, if a retailer at least would try to comply "you probably won't be in any trouble at all. If you don't try, we'll probably have a very serious conversation." Last September the Secretary said "I can't tell anybody they don't have to comply with the law."

The state of Kansas cannot Constitutionally have it both ways. Either we enforce the law or we must change it. Probably every member of this Legislature – perhaps every Kansan – can mention at least one state law that they would prefer to be unenforced. Prosecutorial discretion within reason is necessary. This case, however, applies that discretion in blanket fashion to millions of commercial transactions. If KDOR would articulate the specific legal standards that justify its disregard for a duly enacted law, perhaps we might find many other state statutes that could legally be ignored.

(continued, over) HOUSE TAXATION
Attachment 7
Date 2-19-04

There are judicial remedies for this limbo and perhaps their time has come. A *writ of mandamus* is a court order for a governmental entity to perform its legal duty. On a more personal level, a *writ of quo warranto* is a court order removing a public official from office for, among other grounds, willful neglect to perform any duty required by law. Right now the vast majority of merchants are unwilling to bring any such action because they do not want destination-sourcing to be enforced. However, these retailers should be wary of a few pitfalls before they get too comfortable with the present leniency.

First, KDOR could begin enforcing the law at any time. Second, large national retailers who wholeheartedly support destination-sourcing could file for one of the above writs in order to thrust a sudden and expensive new cost on their small competitors. Third, any given retail customer might have standing to successfully seek enforcement.

Why should customers care? Many of them – and by one careful and responsible calculation, most of them – would pay less sales tax if the destination-sourcing law were enforced. The reasoning is logical. Retailers tend to base their outlets in urban areas where sales tax rates tend to be higher. Their deliveries that trigger the new sourcing rule will tend to be to customers located where sales tax rates are lower.

The net result is millions in overcharged sales tax dollars since last July, all caused by a failure to enforce current law. Put another way, if all retailers complied with the new law, consumers would save millions of dollars per year. Put yet another way, if the state properly enforced our law, local governments would lose millions in tax revenue annually.

What a remarkably convenient state tax result, all thanks to our continuing legal limbo. We get overtaxed now because the law is not enforced. Then, if internet sales tax becomes constitutional, the law finally gets enforced only when the net effect will be higher government revenue.

Then again, maybe the number of states adhering to SSTP will never reach the critical mass necessary to overcome Commerce Clause objections. In that event, Kansas will have implemented a new sales tax rule that does nothing but impose onerous costs on merchants and reduce local tax revenue. Clearly, the wiser move would be to enact either HB 2700 or HB 2599 for a pro-economic growth policy that provides a far more reliable estimate of government revenues.

Thank you for your time and consideration.

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- 0 -
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REBECCA RICE
ATTORNEY AT LAW

**TESTIMONY PRESENTED TO
THE HOUSE ASSESSMENT AND TAXATION COMMITTEE
re: HB 2700 and 2599**

February 18, 2004

**by: Rebecca Rice, Co-Owner
The Lindsborg News-Record**

Mr. Chairman and members of the committee, my name is Rebecca Rice and I appear today as co-owner of the Lindsborg News-Record in support of either or both of these bills or any other legislation the legislature might draft that would provide some relief from this law.

Because I have been a statehouse lobbyist for the past 23 years, I realize there is some risk in speaking publicly about an issue that affects me personally so I would have preferred that John Marshall appear before you today. However, because the News-Record is a weekly newspaper, Tuesday is a particularly bad day for him to be away. Therefore, I am appearing before the committee because I believe it is important for members to hear about the problems for newspaper in addition to the various other types of businesses previously represented.

- 0 -

On the last night of the 2003 session, I walked out of the Capitol with two House members. Both are members of the legal profession and individuals that I consider personal friends so I was comfortable speaking plainly and proceeded to "chide" them for voting for a bill that - once again - concentrates on collecting *more* taxes rather than creating an environment that *entices* both businesses and individuals to locate in Kansas: "Why can't we be the state that became the haven for internet based businesses, rather than the state that was hostile to both the businesses and their customers."

I did not realize, of course, that our very small business - we have only 7 on our payroll - would be so negatively impacted by this ill-advised experiment. How ironic that I, too, had believed the rhetoric that this was a "tax on internet sales" so had not bothered to read the legislation.

In some respects, the destination requirement is not as complicated for our business as it is for others. We collect an address when the subscription is ordered so the issue of finding an address is not part of our cost. However, our subscriber database is contained in software developed specifically for the newspaper business with the primary purpose of compliance with postal regulations. That software company has not indicated a willingness to develop a new product to enable computations of a base price and numerous tax rates. Even if the software would allow such computation, we would still have to keystroke each tax rate for each subscription. Consequently, we simply pay the sales tax by backing it out of the flat-rate subscription. But, that computation had to be conducted and entered into our financial software for each taxing jurisdiction where we sell a subscription. And, we sell one subscription in a large number of different taxing jurisdictions.

HOUSE TAXATION
Attachment 8
Date 2-19-04

Either March 1 or April 1, we will follow the example of the telephone companies and will charge a "sales tax administration fee". Although we will be clear that the fee is not a tax, it will also be clear that the increase is directly caused by state tax mandates that have become so burdensome that we can no longer absorb them. We are encouraging all businesses to do something similar.

There was good news out of SSTOP as well, however. It has caused me to become much more familiar with Kansas sales tax laws. I operate under the assumption that I must pay the highest taxes levied because I have never belonged to a class "favored" by the Legislature. Consequently, we paid sales tax on every purchase for the newspaper. Because of SSTOP, I learned we didn't have to pay sales tax on any product consumed in production. So, we will – eventually - recover some sales taxes that we inadvertently paid over the last 2.5 years. The process for retrieving that money, however, is also time-consuming so that effort is progressing slowly. But, I was able to find one, small, positive result of SSTOP.

I have distributed a sales tax report to this testimony to insure that the committee gains some insight into the many steps we must take to remit to the state, money we have collected for the state. We estimate that we are now spending approximately 14-16 hours per month on the many actions that must occur to gather and report the information on the required sheet. We of course spent far more than that in July and August as we configured – through trial and error - our financial software for input to produce the information we needed to produce the report the Department required. Prior to SSTOP, we spent approximately 4-6 hours per month keystroking the data into financial software to produce the information we needed to produce the one page report the Department required, and then producing that report.

Our tax collections are typically \$260 to \$280 per month. A very minor amount. The 14-16 hours is spread among several people so a single wage rate can not be applied but a conservative estimate is that we spend \$160 to \$180 per month to produce a report to submit with \$260 to \$280 in sales tax.

The \$160 - \$180 per month does not include the value of the time I spend reviewing the report to ensure accuracy – something I did not need to do prior to SSTOP. Our financial software simply produced a sales tax report and the data was easily and quickly transferred to the one page report.

We estimate that we spent at least a full week – involving several different people - modifying our financial software to produce the necessary information for the Department's report. That effort is on-going as we attempt to find additional time-savings.

Although the amount we spend per month does not equate directly to us spending more to collect the tax than is collected, I agree with the comments made by Mr. Gregory of Star Lumber. If other businesses and newspapers have similar experiences to ours, this scheme will ultimately cost the state more than it receives. At 16 hours per month, we are losing one-half day of productivity per week. That is a lot of ads not being sold and copy not being written. So, in addition to the direct cost to the paper, we have the indirect – and less easily quantified - cost of lost productivity. That is not sound fiscal or public policy. Removing significant labor and resources from the economy for the *sole purpose* of remitting taxes to the state, robs the state's economy. The beauty of these types of experiments is that we will not know that we are being tortured because it is the slow drip of the

Thank you, Mr. Chairman. I am available for any questions.

ST-36

(Rev. 7/03)

Kansas Retailers' Sales Tax Return

FOR OFFICE USE ONLY

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------

454003

Business Name		
Mailing Address		
City	State	Zip Code

Tax Account Number
EIN
Due Date

Tax Period	MM	DD	YY
Period Beginning Date			
Period Ending Date			

Date Business Closed

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------

Amended Return

Additional Return

Name or Address Change

Part I

1. Total Tax (Complete Part III before completing this section)		1
2. Total Net Deduction from Part IV (if applicable)		2
3. Tax (Subtract line 2 from line 1)		3
4. Estimated Tax Due for Next Month (See instructions)		4
5. Estimated Tax Paid from Last Month (See instructions)		5
6. Tax (Add lines 3 and 4, and subtract line 5)		6
7. Credit Memo (See instructions)		7
8. Subtotal (Subtract line 7 from line 6)		8
9. Penalty		9
10. Interest		10
11. Total Amount Due (Add lines 8, 9 and 10)		11

Part II Deductions

A. Sales to other retailers for resale		A
B. Returned goods, discounts, allowances and trade-ins		B
C. Sales to U.S. government, State of Kansas, & Kansas political subdivision		C
D. Sales of ingredient or component parts of tangible personal property produced		D
E. Sales of items consumed in the production of tangible personal property		E
F. Sales to nonprofit hospitals or nonprofit blood banks, tissue or organ bank		F
G. Sales to nonprofit education institutions		G
H. Sales to qualifying sales tax exempt religious and nonprofit organizations		H
I. Sales of farm equipment and machinery		I
J. Sales of manufacturing machinery and equipment		J
K. Sales of alcoholic beverages		K
L. Non-taxable labor services, original construction and residential remodeling		L
M. Deliveries outside of Kansas		M
N. Other allowable deductions		N
O. Total deductions		O

Signature _____

I certify this return is correct.

Do Not Detach This Voucher

ST-36V

(Rev. 7/03)

Kansas Retailers' Sales Tax Voucher

FOR OFFICE USE ONLY

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------	--------------------------

Business Name		
Mailing Address		
City	State	Zip Code

Tax Account Number
EIN
Due Date

Tax Period	MM	DD	YY
Period Beginning Date			
Period Ending Date			

Amount from line 4, above
Subtract line 4 from line 11 and enter here

Payment Amount \$

401103

HOUSE TAXATION
Attachment 9
Date 2-19-04

Business Name	
Tax Account Number	EIN

Taxing Jurisdiction Name of City/County	(Column 1) Code	(Column 2) Gross Sales	(Column 3) Merchandise Consumed By You	(Column 4) Part II (Non-Utility) Deductions	(Column 5) Net Sales	(Column 6) Combined Tax Rate %	(Column 7) Net Tax
Assaria Saline	ASSSA	282.22	.	.	282.22	6.30%	\$17.78
Belle Plain Republic	BELRP	28.22	.	.	28.22	6.30%	\$1.78
Bennington Ottawa	BENOT	28.22	.	.	28.22	6.30%	\$1.78
Canton McPherson	CANMP	28.22	.	.	28.22	6.30%	\$1.78
Emporia Lyon	EMPLY	28.09	.	.	28.09	6.80%	\$1.91
Galva McPherson	GALMP	28.22	.	.	28.22	6.30%	\$1.78
Garden City Finney	GARFI	28.02	.	.	28.02	7.05%	\$1.98
Goodland Sherman	GOOSH	28.16	.	.	28.16	6.55%	\$1.84
Gypsum Saline	GYPSA	169.32	.	.	169.32	6.30%	\$10.67
Halstead Harvey	HALHV	28.22	.	.	28.22	6.30%	\$1.78
Hutchinson Reno	HUTRN	84.06	.	.	84.06	7.05%	\$5.93
Leawood Johnson	LEAJO	27.90	.	.	27.90	7.53%	\$2.10
Lenexa Johnson	LENJO	27.90	.	.	27.90	7.53%	\$2.10
		.	.	.	816.77		.

8. Total Net Tax (Part III).

53.19

Total Number of supplemental pages included with this return.

9. Sum of additional Part III supplemental pages.

226.90

10. Total Tax (Add lines 8 and 9. Enter result here and on line 1, Part I).

280.09

KANSAS TAXPAYERS NETWORK

www.kansastaxpayers.com

P.O. Box 20050

316-684-0082

Wichita, KS 67208

FAX 316-684-7527

17 February 2004

Testimony Supporting HB 2599

Karl Peterjohn

Exec. Dir.

Kansas' misadventures with the so-called "streamlined" sales tax statutes have already hurt this state. The harm continues in various forms: uncertainty over this statute's enforcement, the new unfunded mandate onto the private sector this statute created, the costs of complying both one time and continuing, and the harm it places on smaller firms involved in retailing when competing with large national firms.

Kansas has 752 differing sales tax jurisdictions according to the Kansas Department of Revenue. This is a major problem for effectively going to a streamlined sales tax. Fortunately an effort is underway to try and reduce this number but the "new" number is still well over 300. This is still way too many. This is just one of the problems with the state's new modifications that continue to make this law and its enforcement a mess.

Here's an example and I'm taking this from the presentation by the KS Dept. of Revenue in Wichita February 12. The state's system cannot accept negative numbers, so a retailer who makes an isolated sale to a person in a small jurisdiction, pays the tax collected to the state, and then has the item returned by the customer for a refund is out the sales tax money under this new system until another sale occurs in that jurisdiction and a credit can be claimed. The businesses expressing a concern about this problem were told that this problem is still being worked on.

We are well past the "still being worked on" stage on this sales tax mess. The so-called "streamlined" sales tax or, more accurately, the "unfunded mandate and anti-retailer sales tax act" should and must be repealed. If the legislature cannot find the will to enact a bill like H.B. 2700 than H.B. 2599 is the next best substitute.

The so-called "streamlined" sales tax is a national issue involving the 46 states with either state and or local sales taxes. Kansas should not be on the "bleeding edge," as one of the national streamlined sales tax proponents described our position during the interim legislative tax committee hearings last year.

When Kansas enacted this law last year we jumped off a fiscal cliff without really knowing what, if anything, was underneath us. Last year Ohio almost followed us but, fortunately for them, their legislature did a reversal and backed off taking this drastic step. Kansas should not continue to serve as a national model of what NOT to do.

If H.B. 2700 cannot be enacted then mitigate the damage by enacting H.B. 2599.

HOUSE TAXATION

Attachment 10

Date 2-19-04

Legislative Testimony

HB 2599

February 18, 2004

Testimony before the Kansas House Taxation Committee By Marlee Carpenter, Vice President Government Relations

Chairman Edmonds and members of the committee:

I am Marlee Carpenter of The Kansas Chamber of Commerce and we support HB 2599. The Kansas Chamber has a long history of supporting a level playing field between Internet retailers and brick and mortar retailers. We supported the passage of the Streamlined Sales Tax Project (SSTP) last year and this session we continue our support.

Destination sourcing, which is a major element of the SSTP, is of great concern to our retailers and is not working in Kansas, with its more than 750 sales tax jurisdictions. For retailers that deliver in the state, collecting and remitting this tax has become burdensome and expensive. We urge the committee to consider delaying implementation of the destination sourcing requirements until 6 months after Congress implements the SSTP at the national level.

Delaying implementation will do several things. First, it will give legislators time to work with the national project and within the state to find possible solutions to the destination-sourcing problem. Second, the delay will allow the national project to finalize all details and listen to the concerns and work with states like Kansas who are having issues with specific parts of the project.

Additionally, HB 2599 provides an administrative allowance for retailers if there is one permitted at the national level. An administrative allowance is something that the Kansas Chamber has advocated for many years. Collecting and remitting the sales tax for the state of Kansas costs retailers money. With destination sourcing, it is a much more expensive and time-consuming proposition. It is time for the state to provide retailers an allowance for collecting a major part of both the state and local tax base.

The Kansas Chamber also supports a sales tax or income tax credit for small retailers that must invest in software or hardware to comply with destination sourcing. Finally, we support amnesty provisions for retailers during this time of uncertainty—when the law is enacted but a “grace period” has been declared.

Again, the Kansas Chamber continues its support of the SSTP and a level playing field, but also supports a delay in the enactment of the destination sourcing provisions. Thank you for your time and I will be happy to answer any questions.

The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.

HOUSE TAXATION

Attachment 11

Date 2-19-04



The Force for Business

835 SW Topeka Blvd.

Topeka, KS 66612-1671

785-357-6321

Fax: 785-357-4732

E-mail: info@kansaschamber.org

www.kansaschamber.org



KANSAS
ASSOCIATION OF
COUNTIES

Testimony concerning HB 2700
House Taxation Committee
February 18, 2004
Presented by Randall Allen, Executive Director
Kansas Association of Counties

Mr. Chairman and members of the committee, my name is Randall Allen, Executive Director of the Kansas Association of Counties. Thank you for the opportunity to present testimony *in opposition to HB 2700*, repealing much of the 2003 Streamlined Sales Tax Act.

Last November, the membership of our Association adopted our 2004 legislative policy statement unanimously. A main component of our statement concerns the Streamlined Sales Tax and Local Use Tax. It says as follows:

"The Kansas Association of Counties applauds the Kansas Legislature for passing legislation to modernize and streamline the sales tax system and level the playing field among Main Street, mail order, and internet retailers. We urge the state, local governments, and the business community to cooperatively work through unintended issues and problems to maximize the effectiveness and efficiency of the sales and use tax systems, without jeopardizing their position in the total tax system. The sales tax is a vital component of the total revenue mix for both state and county governments. Without a viable sales and compensating use tax, the tax burden will further shift to property taxes. We urge vigilance to ensure that the sales and use tax system is strengthened, not weakened."

We believe that the crux of this discussion is about how we intend to finance basic governmental services in the next several years. For counties, there are currently few options. In fact, we have only two main options – property taxes and sales/use taxes.

I doubt that much more needs to be said about property taxes. Often labeled the most hated tax, property taxes appeal less than other forms of tax revenue to Kansans. Historically, we have been concerned about the viability of the State's sales and use tax because it was the source of two of three demand transfers for counties and other local governments (i.e. the Local Ad Valorem Tax Reduction Fund and the City-County Revenue Sharing Fund). While neither transfer is funded in again in the FY 05 state budget, we cling to some hope that when better

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HOUSE TAXATION
Attachment 12
Date 2-19-04

financial days return, the transfers may be resumed. More importantly, we are concerned about the viability of county option sales taxes levied in 77 of 105 counties. Last year, countywide sales taxes generated about \$290 million, of which approximately 50% was retained by counties for county purposes and the balance distributed to cities within the 77 counties. This compares to annual property tax levies of about \$758 million for county purposes. *The inescapable fact is that without dependable local-option sales taxes, we are inevitably more dependent upon the property tax to finance basic services.*

We strongly support the basic premise of the Streamlined Sales Tax concept, i.e. that all sales, wherever they take place, should be treated the same with respect to taxation, without preference or disadvantage to vendors. We also believe in the fundamental right for states to establish their own sales tax rates and for local governments, within statutory guidelines, to adopt local-option sales taxes. As the insatiable appetite for resources by the federal government plays out in the context of a burgeoning federal budget deficit, we are concerned that if states and local governments do not continue down the road to make it easier for merchants to collect and remit taxes state by state, the federal government will impose a national sales tax and effectively pre-empt states' rights to this important revenue source. In short, we urge the committee and the Legislature to stay the course on streamlined sales tax and support the Department of Revenue's efforts to mitigate the most severe problems associated with its implementation. Thank you.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.



City Manager's Office

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Testimony Before
The House Taxation Committee
Regarding
Streamlined Sales Tax – HB 2599 and HB 2700

February 17, 2004

The City of Overland Park supports Kansas' participation in the Streamlined Sales Tax (SST). We encourage the committee to not hastily undo years of gradual study and progress that preceded the State's participation in the project.

Much has been made of the rough beginning the state and retailers experienced with implementing the Streamlined Sales Tax, particularly the destination-based sourcing rules. Change is rarely easy, and even less frequently wanted. However, we believe the work of the state and local chambers of commerce, the Department of Revenue, and local governments has helped to greatly mitigate the challenges faced by most businesses.

The City of Overland Park supports a strategy that promotes the collection of sales taxes and minimizes the burden on companies. Most indications are that the Department of Revenue has worked hard to provide tools for businesses to easily calculate sales taxes and generate the necessary remittance reports.

Additionally, the challenge of multiple taxing jurisdictions continues to be addressed and minimized. For instance, Revenue has indicated businesses may track delivered sales by county when a city in that county does not have a local sales tax. This has reduced by hundreds the number of taxing jurisdictions to which destination sourcing applies.

Participation in the SST has gained Kansas voluntary collection of sales and use tax by some retailers. This not only benefits the state, it also benefits Kansas businesses. Currently, a bookstore in downtown Overland Park is required to charge state and local sales tax. When consumers choose to purchase books from an out-of-state vendor, they are not charged sales tax if the out-of-state business does not have a presence in Kansas. Very few consumers remit the required use tax on the books they purchase, creating a competitive advantage for the out-of-state vendor. As we have recently seen with Amazon.com and others, participation in the Streamlined Sales Tax has created new partners for the State in the collection of taxes already due.

The City of Overland Park believes that passage of the Streamlined Sales Tax by the 2003 legislature was the correct long-term policy choice. We are confident that the legislature, Department of Revenue, retailers, and local governments can address implementation issues in a manner that does not end the State's participation in the SST. We ask that you not report HB 2700 and HB 2599 favorably for passage.

HOUSE TAXATION

Attachment 13

Date 2-19-04



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Fax: (785) 354-4186

League of Kansas Municipalities

Date: February 17, 2004
To: House Taxation Committee
From: Don Moler, Executive Director
Re: Opposition to HB 2700 and HB 2599

Thank you for allowing me to appear before you this morning on behalf of the League of Municipalities and its member cities in opposition to HB 2700 and HB 2599. The League has been involved with this issue since the beginning of the Streamlined Sales Tax Initiative. We have been a member of the State working group which was formed when the issue first began to be studied, and we remain a member of the group. The League has spent much time reviewing the various aspects of tax collection on remote sales. We remain convinced that the Streamlined Sales Tax Initiative remains an important step in the taxation of Internet sales.

Just a few years ago there were essentially no commercial sales on the Internet. Today we see mammoth sales with growth at exponential rates. Most commentators expect continuing growth in the foreseeable future. The League remains solid in its belief that we must have a system which is equitable for those businesses who operate from brick and mortar locations as well as those operating via the Internet. The League position on Internet sales, adopted by our Convention of Voting Delegates at the October, 2003 annual conference reads as follows: **"Streamlined Sales Tax Project.** We support the Streamlined Sales Tax Project including a local compensating use component. The Kansas Department of Revenue should work with businesses to make the transition to destination-based sourcing as smooth as possible. Locally elected officials and their citizens should determine local sales and use tax rates. We urge Congress to take action as soon as practicable to pave the way for mandatory collection of sales and use taxes on remote sales. Any federal tax legislation should not preempt state and local sales tax authority."

From this statement it is easy to see that the League remains firmly committed to the Streamlined Sales Tax project as implemented last year by this legislature. While we realize there have been difficulties in implementing the system, we have no doubt that the Kansas Department of Revenue, and the State of Kansas, can make the Streamlined Sales Tax work in Kansas. As a result we are strongly opposed to both HB 2700 and HB 2599. We do not feel that it is appropriate to repeal the Streamlined Sales Tax, nor do we believe that the implementation of the destination sourcing rules should be delayed until such time as Congress acts on the matter. To take either of these approaches would be a step away from the ability to tax Internet sales and might forever bar the ability of Kansas, and its local governments, to receive the sales tax income off of those Internet sales. Times change, as do tax systems, and now is the time for the State of Kansas to move forward with this new system of sales taxation which will level the playing field and allow for revenues to be derived from Internet Sales. We urge this Committee to reject both bills and stay the course concerning the Streamlined Sales Tax and its implementation.

HOUSE TAXATION

Attachment 14

Thank you for allowing the League to testify on this very important mat Date 2-17-04