

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on March 3, 2004 in Room 519-S of the Capitol.

All members were present except:

Representative Jeff Goering- excused
Representative Jeff Jack- excused
Representative Nancy Kirk- excused
Representative Tom Sawyer- excused

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:

Richard Cram, Department of Revenue
Larry Newman, Department
Edie Martin, Department of Revenue
Phil Wilkes, Department of Revenue
Edward Cross, Independent Oil & Gas
Marvin Spees, Capitol City Oil

Others attending:

See Attached List

Chairman Edmonds opened the meeting for bill introductions and requested the introduction of a bill dealing with certain prohibitive action regarding gasoline sales as well as a reduction of \$.01 in gasoline tax.

Hearing no objections, the Chairman's request will be accepted for introduction.

The Chairman opened the meeting for public hearing on **HB 2679** and the companion bill **SB 413** recognizing Richard Cram who was present to voice the opinion of the Department of Revenue. This bill would require entity-based sales tax exemptions to apply for an identification number from the Department of Revenue to be shown on any exemption certificate given to a retailer when the exempt organization claims a sales tax exemption on its purchases. This would give the Department a degree of quality control over the types of entities claiming sales tax exemptions and would allow them to more easily match documented exemption claims with the purchaser when the retailer is audited. (Attachment 1)

With no one else wishing to testify as a proponent or an opponent, the floor was closed for public hearing on **HB 2679** and companion bill **SB 413**.

The committees' attention was turned to **HB 2609** with Richard Cram again testifying as an opponent for the Department of Revenue. This bill is the Department's proposal to increase from one to two years the mineral tax minimum production exemption renewal period on oil wells and oil production leases. (Attachment 2)

At the request of Richard Cram, Larry Newman, also of the Department of Revenue addressed the committee to help with explanation of questions asked by the committee regarding mineral severance tax exemption.

Next to testify before the committee as a proponent of **HB 2609** was Edward Cross, Executive Vice-President of KIOGA (Kansas Independent Oil & Gas Association). Mr. Cross stated that their organization was comprised of mostly small business entities and allowing qualified taxpayers applying for an exemption from the excise tax imposed on the severance and production of oil and gas biennially would meet approval. They did submit a request for several amendments to the bill. (Attachment 3)

Having heard all proponents and with there being no opponents, the Chairman closed the public hearing on

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on March 3, 2004 in Room 519-S of the Capitol.

HB 2609 and opened the public hearing on **HB 2610** and the companion bill **SB 368**.

Once again Richard Cram from the Department of Revenue testified as a proponent. The Department is recommending **SB 368** as amended by the Senate. They have recommended the amendment in order to clarify that listings generated by the claimant, if approved by the director, can be used to document refund claims. **HB 2610**, as introduced, does not reflex this amendment.

With no one wishing to further address the bill either as a proponent or opponent, the meeting was closed for public hearing on **HB 2609**.

Attention was turned to **HB 2610** and the companion bill **SB 368** as the Chairman opened public hearing and, again, recognized Richard Cram from the Department of Revenue as a proponent. The Department is recommending **SB 368** as amended in order to clarify that listings generated by the claimant, if approved by the director, can be sued to document refund claims. **HB 2610** does not reflect this amendment. (Attachment 4)

Edie Martin from the Department of Revenue assisted Richard Cram in answering committee questions regarding motor fuel tax refund claims.

Marvin Spees, President of Capitol City Oil addressed the committee as a proponent of **HB 2610** and companion bill **SB 368**. On behalf of the industry, they whole heartedly support the change and help the Department of Revenue get out of the 1950's and at least get into the 1990's. This bill would keep them from halving to sort through a lot of boxes of original invoices and be able to generate a computer invoice. (No written testimony)

There was no one else wishing to address this bill and the public hearing on **HB 2610** and companion bill **SB 368** was closed.

The meeting was opened for public hearing on **HB 2663** and companion bill **SB 411**. The Department of Revenue was represented by Richard Cram who testified as a proponent. The Department proposes to amend K.S.A. 79-5205. The proposed change would eliminate the need for a drug tax KAPA (Kansas Administrative Procedures Act) hearing within KDOR (Kansas Department of Revenue) an would reduce the clerical time currently required to prepare and mail hearing notices and orders required by KAPA. Paperwork would be significantly reduced. (Attachment 5)

Phil Wilkes from the Department of Revenue stood before the committee to assist in answering questions regarding drug taxes and collection.

Hearing on **HB 2663** and **SB 411** was closed.

The next order of business was a request for adoption of Taxation Committee Minutes from February 4th, 5th, 10th, 11th and 12th. Representative Huff made a motion to adopt the minutes as read. The motion was seconded by Representative Owen. Motion passed. Minutes were adopted.

Meeting adjourned at 10:20 a.m.



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the House Taxation Committee Joan Wagnon

March 3, 2004

House Bill 2679 and Senate Bill 413

Chairman Edmonds and Members of the Committee:

House Bill 2679 is identical to Senate Bill 413, which the Senate has passed. Senate Bill 413 has been referred to the House Taxation Committee. House Bill 2679 would require, as of January 1, 2005, organizations with entity-based sales tax exemptions to apply for an identification number from the Department of Revenue, to be shown on any exemption certificate given to a retailer when the exempt organization claims a sales tax exemption on its purchases. This should give the Department a degree of quality control over the types of entities claiming sales tax exemptions. It will enable the Department to more easily match documented exemption claims up with the purchaser when the retailer is audited, so the validity of those claims can be verified with the purchaser. The identification number will also give the retailer an indication that the organization has obtained the number from the Department. The Streamlined Sales and Use Tax Agreement allows states to require that exempt organizations use identification numbers on their sales tax exemption claims.

One of the primary goals the business community seeks in the Streamlined Sales Tax Project is reducing the burden on retailers to police the legitimacy of sales tax exemption claims, and limiting the retailers' liability exposure for invalid exemption claims. The Agreement encourages states to pursue the purchaser, rather than the retailer, on an invalid exemption claim, if the retailer has obtained a properly completed exemption certificate from the purchaser at the time of sale. Section 317 of the Streamlined Sales and Use Tax Agreement (Agreement) provides in part:

"A member state may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that shall be presented to the seller at the time of the sale."

Other states, including Oklahoma, Nebraska, Colorado, Utah, and South Dakota, require sales tax-exempt organizations to obtain identification numbers to be used on exemption claims at the time of purchase.

Anyone claiming a sales tax exemption on a purchase must complete and give the retailer at the time of purchase a sales tax exemption certificate providing the name and address of the purchaser, describing the items purchased, and the specific reason for exemption. The

Department has produced specific sales tax exemption certificate forms for each sales tax exemption, downloadable from the Department's website at www.ksrevenue.org. Except for project exemption certificates (which apply to building construction or repair projects for certain exempt entities), exemption certificates completed by a purchaser are not pre-approved by the Department. The retailer must receive a properly completed exemption certificate from the purchaser and must retain the certificate in order to be protected from exposure to a later assessment for the uncollected sales tax.

The only added requirements for non-profit entity sales tax exemption claims are that the certificate must be signed by the officer, manager or administrator of the entity and must contain the driver's license number of the signor, if the certificate is in paper form. Payment must be by check, warrant or voucher directly from the entity, or by charge to the account of the entity. Payment by cash or in the form of a check from someone other than the entity invalidates the exemption claim. K.S.A. 2003 Supp. 79-3651(f). However, there is no requirement that, prior to the purchase, the entity claiming the exemption obtain a determination from the Department of Revenue of its exempt status. For example, religious organizations exempt from federal tax under IRC 501(c)(3) enjoy a sales tax exemption on purchases used exclusively for religious purposes. Organizations frequently contact the Department of Revenue to request a ruling on whether they qualify for a particular sales tax exemption, such as the religious organization exemption, and it is prudent practice to do so. But there is no statutory requirement that an organization obtain such a ruling. An entity could claim to be a religious organization, fill out an exemption certificate and give it to a retailer at the time of purchase, without any interface with the Department of Revenue. Only if the Department later audited the retailer, noted the exemption certificate, and followed up directly with the purchaser would there be any check on the exemption claim's validity.

This proposal would allow the Department to build a database of entities claiming sales tax exemptions by virtue of their status, as those entities apply for and obtain identification numbers to be used on exemption claims. This database should assist the Department's audit staff in tracking exemption certificates obtained from audits of retailers back to the entities claiming the exemptions. The exempt entity identification process would also provide the Department the opportunity to determine that the entity is in fact the type of organization included in the exemption. If the Department can determine from the information submitted with the application for an identification number that the entity is not included in the exemption, the Department would not issue an identification number. If the entity does not have an exempt entity identification number, then effective January 1, 2005, it cannot claim the sales tax exemption.

The exempt entity identification process proposed should enhance the Department's ability to monitor sales tax exemption claims made by these entities. Attached is a list of the entities affected by this proposal.

Entities required to obtain exempt entity identification numbers under this proposal:

State of Kansas and political subdivisions, nonprofit hospitals and blood and tissue banks;
Public or private elementary or secondary school or public or private nonprofit educational institutions;
Groundwater management districts;
Port authorities;
Nonprofit skilled nursing homes or intermediate nursing care homes;
Nonprofit organizations for nonsectarian comprehensive multidiscipline youth development programs;
Community-based mental retardation facilities or mental health centers;
Nonprofit corporations organized for purposes of encouraging programs for public health improvement;
Community action groups or agencies for repairing or weatherizing low income housing;
Nonprofit museums or historical societies;
Public broadcasting stations licensed as noncommercial education television or radio stations;
Not-for-profit 501(c)(3) corporation to construct a Kansas Korean War memorial;
Rural volunteer fire-fighting organizations;
American Heart Association, Kansas Affiliate, Inc.;
Kansas Alliance for the Mentally Ill, Inc.;
Kansas Mental Illness Awareness Council;
American Diabetes Association Kansas Affiliate, Inc.;
American Lung Association of Kansas, Inc.;
Kansas chapters of Alzheimer's Disease and Related Disorders Association, Inc.;
Kansas chapters of Parkinson's disease association;
National Kidney Foundation of Kansas and Western Missouri;
Habitat for Humanity;
Nonprofit zoos;
Parent-teacher associations;
Over-the-air free access radio or television stations;
Religious organizations;
Primary care clinics or health centers serving the medically underserved; and
Kansas Academy of Science.



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF POLICY AND RESEARCH

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the House Taxation Committee
Richard Cram, Director of Policy & Research

March 3, 2004
House Bill 2609

Chairman Edmonds and Members of the Committee:

House Bill 2609 is identical to Senate Bill 369, previously introduced in the Senate Committee on Assessment and Taxation. House Bill 2609 is the Department's proposal to increase from one to two years the mineral tax minimum production exemption renewal period on oil wells and oil production leases. K.S.A. 79-4217(b)(3)(A)&(B) requires that taxpayers apply to the Department for renewal of minimum production exemptions on oil wells and oil production leases annually. This proposal would change the renewal period to every two years, instead of one year. Eighty-eight % of leases qualify for the minimum production exemption every year. For the most part, KDOR processes the same wells for renewal year after year.

Section 1 amends K.S.A. 79-4216, the definitions statute, to add a definition for "lease number," so that the Department can assign a number for each lease or production unit.

Section 2 amends K.S.A. 79-4217(b)(3) to provide that, for administrative efficiency, the minimum production exemption period will be two years, with the expiration period to be staggered depending on whether the lease number is even or odd, so that initially, for odd-numbered leases, the initial minimum production exemption period after this proposal becomes effective will expire in one year. For even-numbered leases, the initial exemption period will be two years. Thereafter, the two-year exemption period for odd-numbered leases and wells will expire next year and the period for even-numbered leases and wells will expire the year after, and so on.

Changing the exemption period to two years will reduce the Department's burden in processing renewal applications by approximately 7,000 per year. This will also reduce the paperwork burden on mineral taxpayers in applying for exemption renewals. As discussed above, there will be a two-year "phase-in" period. This would reduce the number of outgoing letters by 21,000 per year (3 mailings/letters per renewal, as well as reduction in FTE hours to review and approve the exemptions). The Department can use the saved FTE hours to perform additional tasks, such as collection enhancement.

HOUSE TAXATION

Attachment 2

DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA, KS 66612
Voice 785-296-3081 Fax 785-296-7928 <http://www.ksrevenue.gov> Date 3-3-04

Kansas Independent Oil & Gas Association
800 S.W. Jackson Street, Suite 1400
Topeka, Kansas 66612
785-232-7772
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Testimony to the House Committee on Taxation
House Bill 2609 – An Act Concerning Mineral Severance Tax Exemptions
Edward P. Cross, Executive Vice President
Kansas Independent Oil & Gas Association
March 3, 2004

Good morning Chairman Edmonds and members of the Committee. I am Edward Cross, Executive Vice President of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA represents oil and gas producers in Kansas, a vast majority of which are small business entities. We appear this morning to express our support for HB 2609. Allowing qualified taxpayers applying for an exemption from the excise tax imposed on the severance and production of oil and gas biennially makes good sense. Marginal oil and gas wells operate at the lower edge of profitability, even during times of relatively high oil and gas prices. Most of the wells qualifying for the severance tax exemption will almost certainly qualify each year. These marginal wells, we call stripper wells, are in the mature stage of their productive life and will not increase their productive capacity unless other producing zones are developed in the wells, formation enhancements and stimulation procedures are conducted, or new technology is developed to increase recoverability of remaining oil and gas reserves. Biennial application for the severance tax exemption cuts general administrative costs for marginal oil and gas well operators and cuts costs for the State of Kansas by allowing a biennial review of the exemption applications and frees State employee time for addressing other tasks.

Ladies and gentlemen, as you may know other bills (House Bill 2651 and Senate Bill 369) addressing severance tax exemptions are being considered by House and Senate Committees. While the House and Senate Bills address other issues in the Severance Tax Act (K.S.A. 2003 Supp. 79-4217), perhaps this Committee would like to address the changes noted in the House and Senate Bills. The changes we propose were developed and presented by the State Energy Resources Coordination Council (SERCC) with the exception of one amendment that will be proposed by KIOGA. We propose that HB 2609 be amended to reflect the following changes recommended by SERCC and noted from HB 2651 and SB 369.

- 6 • Page 4, Line 9 (\$16 changes to \$19)
- 7 • Page 4, Line 11 (\$15 changes to \$17)
- 8 • Page 4, Line 13 (\$14 changes to \$16)
- 9 • Page 4, Line 15 (\$13 changes to \$15)
- Page 4, Line 31 (\$16 changes to \$19)
- Page 4, Line 33 (\$15 changes to \$17)
- Page 4, Line 35 (\$14 changes to \$16)

HOUSE TAXATION

Attachment 3

Date 3-3-04

These price reference points for severance tax exemptions for low-volume gas wells and low-volume oil wells are increased in recognition of the cost increases that have occurred since the reference points were established or last revised. They would not have any current fiscal affect and are simply price risk mitigation measures for marginal oil and gas operations.

- Page 5, Line 26 (. . . and continuing for a period of 24 months, *or a period of 48 months in the case of gas produced from coal seams*, from the month in which . . .)
- Page 5, Line 31 (. . . months, *or a period of 48 months in the case of gas produced from coal seams*, following the month in which oil or gas was first produced from . . .)

Coal bed methane (CBM) production is an economic development opportunity for Kansas. Because of the unique production characteristics of CBM, extending the severance tax exemption period will promote exploration and production of CBM.

- Page 5, Line 33, 34, & 35 (. . .or gas in *one or more natural reservoirs in communication so as to constitute* a single pressure system so that production from one part of the pool affects the *pressure* throughout its extent;)

This measure allows oil and gas producers to unitize more than one single and separate natural reservoir if the same are in communication so as to constitute a single pressure system. In essence, this measure would encourage more efficient development of pools that extend beyond single lease boundaries.

- Page 8, Line 4 (\$20 changes to \$23)
- Page 8, Line 6 (\$2.50 changes to \$3)

These price reference points for production enhancement exemptions are increased in recognition of the cost increases that have occurred since the reference points were established or revised. They are simply a price risk mitigation measure for marginal oil and gas operations.

KIOGA also recommends a change to Line 33 on page 3. The House Bill changes \$87 to \$135. KIOGA believes this low-volume severance tax exemption should be based on volume produced, not dollars generated per day. With fluctuations in natural gas prices, many gas producers are faced with monthly changes in a particular well's exemption status. Marginal gas wells, stripper wells, operate at the lower edge of profitability. The Interstate Oil & Gas Compact Commission (IOGCC) defines a low-volume stripper well as a natural gas well that produces 60 thousand cubic feet (Mcf) per day or less. The IOGCC represents the Governors of 37 oil and gas producing states of which Kansas has been a member since 1935. The IOGCC mission is to promote the conservation and efficient recovery of domestic oil and gas resources, while protecting health, safety, and the environment. Data collected from the Kansas Corporation Commission (KCC) indicates current Kansas oil & gas operations include 17,647 gas wells. The 2003 IOGCC National Stripper Natural Gas Well Survey indicates Kansas has 10,437 stripper gas wells. KCC data indicates Kansas produces 453.5 billion cubic feet (Bcf) per year.

If all the stripper gas wells in Kansas produced an average of 60 Mcf per day, gas production from stripper wells would be 228.570300 Bcf per year leaving the remaining 7,210 gas wells producing 224.9297 Bcf per year for an average well production of 85.5 Mcf per day. In reality, the 2003 IOGCC National Stripper Well Natural Gas Survey indicates 124.877543 Bcf per year of gas was produced from stripper wells in Kansas in 2003 for an average well production of 32.7805 Mcf per day leaving the remaining 7,210 gas wells producing 328.622457 Bcf for an average well production of 124.873162 Mcf per day. In summary, using the IOGCC definition of a stripper gas well as being one which produces 60 Mcf per day or less and the data presented today which indicates the average production of a Kansas stripper natural gas well at 32.7805 Mcf per day and the average production of a natural gas producing well that is not defined as a stripper well at 124.873162 Mcf per day, a stripper well in Kansas produces at a level some 73.7% below the average non-stripper gas well in Kansas. The data also indicates that less than 28% of the total gas produced in Kansas comes from the 10,437 stripper gas wells in Kansas.

KIOGA projects natural gas prices to soften in 2004 to a \$3.80 to \$4.00 per Mcf range. Lower natural gas storage injection requirements in 2004 is expected to more than offset the gap between the projected increase in natural gas demand and the decline in natural gas supply resulting from drilling intensity decline.

Therefore, in consideration of the information presented, KIOGA suggests placing the low-volume severance tax exemption on gas wells found on Line 33 of Page 3 of HB 2609 at 60 Mcf per day. Low-volume production exemption is consistent with thresholds set for marginal production by national studies and, more importantly, sets the exemption status at approximately 73.7% below the average non-stripper gas well in Kansas. Basing the exemption on production volume rather than monetary value is more logical and less burdensome for marginal oil and gas producers and the State of Kansas. If natural gas prices indeed do fluctuate between \$3.80 and \$4.00 per Mcf as we project, the monetary value of the exemption would fluctuate from \$228 to \$240. If natural gas prices fluctuate above \$4 for a significant period of time, many natural gas producers who operate marginal gas wells will find their budgets more accommodating for pursuing production stimulation and enhancement programs that would boost their production beyond 60 Mcf per day threshold and take them out of the low-volume exemption status.

Thank you for your time and consideration. I would be happy to answer any questions.



K A N S A S

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KATHLEEN SEBELIUS, GOVERNOR

Testimony to the House Taxation Committee
Richard Cram, Director of Policy & Research

March 3, 2004

House Bill 2610 and Senate Bill 368

Chairman Edmonds and Members of the Committee:

House Bill 2610 is similar to Senate Bill 368, which the Senate amended (as recommended by the Department) and passed. Senate Bill 368, as amended, has been referred to the House Taxation Committee. House Bill 2610 proposes to change and update the language in the motor fuel tax refund statute, K.S.A. 79-3458, concerning the documentation required to support motor fuel tax refund claims to allow for automated invoices as approved by the Director of Taxation, and to eliminate the requirement that only hard copy original invoices can be accepted as supporting documentation.

K.S.A. 79-3458 currently requires that a motor fuel tax refund claim be accompanied by the original invoices for the fuel purchases, showing that the motor fuel tax sought to be refunded has been paid by the claimant. Due to advancing technology and the electronic purchasing systems now being used for motor fuel transactions, the language in K.S.A. 79-3458 is outdated. Many of these electronic purchasing systems do not generate original hard copy invoices or receipts. The language in K.S.A. 79-3458 needs to be updated to allow for automated or electronic invoices, as approved by the Director, to be used as supporting documentation for a motor fuel tax refund claim. This change would align the statute to reflect today's technologies and improve the efficiency of refund claim processing by allowing automated invoices or computer generated listings, as approved by the director, in place of original fuel invoices or receipts. With some current electronic fuel purchasing systems, such as card-trol systems, or pay at the pump systems, original hard-copy invoices or receipts are generally not produced. Attached for reference is Senate Bill 368, as amended by the Senate Committee on Assessment and Taxation and passed by the Senate. We recommended the amendment in order to clarify that listings generated by the claimant, if approved by the director, can be used to document refund claims. House Bill 2610, as introduced, does not reflect this amendment.

In its Performance Audit Report dated June 2003 on the Department's administration of motor fuel tax refund claims, Legislative Post Audit criticized the Department for paying two substantial motor fuel tax refund claims that were not fully supported by original invoices. This proposal responds to the LPA's recommendation.

HOUSE TAXATION

DOCKING STATE OFFICE BUILDING, 915 SW HARRISON ST., TOPEKA, KS 66612
Voice 785-296-3081 Fax 785-296-7928 <http://www.ksre.com> Attachment 4
Date 3-3-04

SENATE BILL No. 368

By Committee on Assessment and Taxation

1-27

10 AN ACT concerning motor vehicle fuel taxes; relating to claims for re-
11 funds; amending K.S.A. 79-3458 and repealing the existing section.

12

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

14 Section 1. K.S.A. 79-3458 is hereby amended to read as follows: 79-
15 3458. After purchasing or acquiring for use motor-vehicle fuel or special
16 fuel upon which refund of the tax may be due, a purchaser and claimant
17 may file with the director a claim on a form furnished by the director.
18 Such claim for refund must be filed within one year after the date of
19 purchase of the motor-vehicle fuels or special fuels on which a tax refund
20 is claimed. The claim shall show or include the following:

21 (1) The name, post office address and the refund permit number of
22 the claimant;

23 (2) the total number of gallons of motor-vehicle fuel or special fuel
24 purchased as ~~represented~~ supported by original **invoices** or *automated*
25 **invoices or self-generated lists** ~~which shall be attached, and which in-~~
26 ~~voices shall approved by the director that show that the claimant has paid~~
27 ~~the distributor or retailer delivering price of~~ such motor-vehicle fuel or
28 special fuel in full, including the motor-vehicle fuel or special fuel tax. If
29 an original invoice ~~shall be~~ is lost or destroyed, a statement to that effect
30 shall accompany the claim for refund and such statement shall also set
31 forth the date of delivery, the serial number of the invoice, number of
32 gallons of motor-vehicle fuel or special fuel purchased and the name of
33 the distributor or retailer from whom purchased; and if the director finds
34 that the invoice was originally properly issued and that the claim is oth-
35 erwise regular, the director shall allow such claim for refund;

36 (3) the amount of the claim; and

37 (4) if motor-vehicle fuel or special fuel for motor vehicles using the
38 public highways is generally purchased for delivery directly to the fuel
39 tank of such vehicles, the name of the dealer from whom the greater
40 portion of such purchases are made.

41 All applications for refunds furnished by the director shall contain a
42 printed warning clause. Every such application for refund if made by an
43 individual shall be signed by the claimant and if the claimant is a corpo-

1 ration or association it shall be signed by one of the principal officers of
2 the corporation or association and in the case of a partnership, by one of
3 the partners.

4 Sec. 2. K.S.A. 79-3458 is hereby repealed.

5 Sec. 3. This act shall take effect and be in force from and after its
6 publication in the statute book.



K A N S A S

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

March 3, 2004

Testimony to the House Taxation Committee
9:00 a.m., Room 519-S
Joan Wagnon

House Bill 2663 and Senate Bill 411

Chairman Edmonds and Members of the Committee:

House Bill 2663 is identical to Senate Bill 411, which the Senate has passed. Senate Bill 411 has been referred to the House Taxation Committee. The Department proposes to amend K.S.A. 79-5205 to replace the formal appeal process under the Kansas Administrative Procedures Act (KAPA) for drug tax assessments with the informal conference process used for income tax (K.S.A. 79-3226) and sales tax (K.S.A. 79-3610) administrative appeals. Currently, drug tax appeals within KDOR are a formal process under the KAPA. If the appeal is not settled between the taxpayer and the drug tax attorney, then a formal hearing is held before the designated hearing officer, along with a court reporter and representation for the Department and the taxpayer. This often necessitates local law enforcement officers travelling to Topeka to testify. If the taxpayer loses, he or she may request another formal KAPA hearing before the Board of Tax Appeals. The formal hearing within KDOR is duplicative for both the state and taxpayer.

The proposed change would eliminate the need for a drug tax KAPA hearing within KDOR and would reduce the clerical time currently required to prepare and mail hearing notices and orders required by KAPA. Instead, a designee of the Secretary could handle the informal conferences related to drug tax appeals, and the paperwork involved in scheduling and rescheduling hearings would be significantly reduced. This would result in annual savings of approximately 100 hours of hearing officer time and 400 hours of senior administrative assistant time. That time could be spent on other tasks for the Department. Currently, the Department's drug tax attorney reviews each case that is appealed and discusses the facts, issues and possible compromise with the taxpayer or taxpayer's attorney. Under the proposed informal conference process, the Department's attorney could work with the Secretary's designee in the issuance of a written determination letter in the few cases where a compromise cannot be worked out (currently less than 5% of the appeals), rather than conduct a formal KAPA hearing.

The Department currently has pending 85 drug tax assessment appeals. Drug tax assessments are generally issued at the same time that law enforcement personnel seize illegal drugs and arrest the defendant for an illegal drug violation. The appeal of the drug tax assessment generally remains pending until the outcome of the criminal case, which may be a

HOUSE TAXATION

Attachment 5

Date 3-4-04

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lengthy time period. The drug tax assessment administrative appeal hearing often must be rescheduled several times by Department staff if there are delays in getting the criminal case resolved. Most often, the drug tax assessment is settled without a hearing after the criminal case resolved.

The informal conference process used for administrative appeals of income and sale tax matters is much less formal and more flexible than the KAPA hearing process. The informal conference can be held by telephone, without the presence of a court reporter. Once an assessment appeal is filed by the taxpayer, by mutual agreement, the Department could postpone scheduling the informal conference until after disposition of the criminal case, rather being required to schedule a hearing under KAPA that will most likely have to be rescheduled several times before the criminal case has ended. Drug tax appeals would fall under the same administrative remedy as the major taxes, income and sales tax.