

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on March 8, 2004 in Room 519-S of the Capitol.

All members were present except:

Representative Ed O'Malley- excused  
Representative Tom Sawyer- excused  
Representative Vaughn Flora- 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:

Secretary of Revenue, Joan Wagnon  
Bob Totten, Public Affairs Director, Kansas Contractors Association  
Don Clarkson, Clarkson Construction Company  
Scott Anderson, Hamm, Inc. of Kansas  
Ron Hein, Hein Law Firm  
Jay Befort, Department of Revenue Staff Attorney

Others attending:

See Attached List

Chairman Edmonds opened the meeting for any bill introduction.

The Chairman requested introduction of a resolution amending the constitution with regard to the assessment rate for certain utility properties.

There were no objections and this will be accepted for introduction.

Chairman Edmonds opened the meeting for public hearing on **HB 2662** recognizing Bob Totten, Public Affairs Director for the Kansas Contractors Association. It is their opinion that passage of this bill would allow sales tax to be collected at the rate as it was prior to July 1, 2003 on construction projects.

(Attachment 1)

Clarkson Construction Company in Kansas City was represented by Don Clarkson in support of **HB 2662**. In his testimony, Mr. Clarkson stated that this bill provides a provision to allow contractors to complete their contracts under the same tax rules as when the contracts were bid. (Attachment 2)

The final proponent Scott Anderson, Chief Financial Officer for Hamm, Inc. of Kansas testified in support of **HB 2662**. Mr. Anderson provided testimony urging the committee to support the bill for passage. This bill would allow the contractor to complete contracts under the same tax rules as when they entered into the contracts in a fair and equitable manner. (Attachment 3)

There were no opponents to **HB 2662** and the Chairman closed the public hearing on the bill and opened the meeting for hearings on **HB 2696**.

Secretary of State, Joan Wagnon, introduced Jay Befort, one of the Department's Staff Attorneys to discuss the details of proposed **HB 2696**. It provides new language to strengthen and streamline the existing procedures for enjoining the operation of businesses delinquent in their tax payments. (Attachment 4)

With no other person wishing to address the bill, Chairman Edmonds closed the hearing on **HB 2696**.

The Chairman opened the meeting for public hearings on **HB 2681** and recognized Secretary of Revenue, Joan

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on March 8, 2004 in Room 519-S of the Capitol.

Wagnon who gave testimony in support of the bill. She stated that the bill is intended to ensure that sales tax exemption claims for utilities furnished through a meter are valid and periodically verified by a usage study. The bill requires a utility customer to submit an engineer study to the utilities provider verifying the portion of the utilities furnished through a meter claimed to be exempt from sales tax. It also provides that no exemption would be allowed for consumed utilities unless the percentage of exempt use through the meter is more than 50%. Finally, the proposal provides that refunds to a particular taxpayer account for amounts under \$5 per reporting period would not require payment. It is the Department's estimate that this proposal would result in \$9 million additional state sales tax revenue in fiscal year 2005. The state general fund would increase \$8.6 million and the highway fund \$400,000. Local sales tax receipts would also see an increase of \$2.5 million annually. (Attachment 5)

With no further proponents, the Chairman recognized Ron Hein representing the Kansas Restaurant and Hospitality Association in opposition to **HB 2681**. They are in opposition to the bill because it eliminates for some members of their industry the sales tax exemption set out in K.S.A. 79-3606 (n), which provides an exemption from sales tax for utilities consumed in production. Under this bill sales tax exemption for utilities consumed in production would only be applicable if the amount of usage on one meter was in excess of 50% of the meter usage. (Attachment 6)

There were no further conferees wishing to address this bill and the Chairman closed the public hearing on **HB 2681**.

With no further business before the committee, the meeting was adjourned at 10:20 a.m.



# THE KANSAS CONTRACTORS ASSOCIATION, INC.



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Kansas City, Kansas

CORKY BEACHNER, Vice President  
St. Paul, Kansas

MIKE MORRAND, Treasurer  
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## Testimony

By the Kansas Contractors Association

before the House Taxation Committee on H 2662

March 8, 2004

Mr. Chairman and members of the Committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization **represents over 400 companies** who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

Today, I want to tell you of our support for HB 2662 because it would allow sales tax to be collected at the rate as it was prior to July 1 2003 on construction projects.

As you know, our contractors make bids based on what they believe will be the circumstances when a project is being built. Prior to the passage of the destination sales tax, many companies made plans believing the sales tax on materials delivered to a job site would be charged the sales tax rate of where it was purchased. They got caught when the legislature passed the destination sales tax and made it effective July 1, 2003.

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Attachment 1

Date 3-8-04

This change meant that in some construction jobs there was a change of over 2-3 percent because of the difference on sales tax purchases depending on where the project was being built. That is a significant amount of change especially when many construction jobs are based on a 2-3 percent project.

KDOT tells me there were 99 companies under contract with KDOT prior to July 1, 2003 and they all had the potential of some effect with this sales tax change. Some of it amounted to a small amount of money while other companies suffered a great disservice due to this change....in those cases it came to between 50 to 150 thousand dollars on one project.

Remember this change did not just effect companies who had contracts with KDOT. It effected any contract whether it was with a city, county or school district or private entity...and I am not sure how many companies it has effected but I have heard a lot about it.

When such a change has happened in the past there has been trailing legislation to make things right...in other words...if the playing field got changed similar to the way this situation occurred, the legislature has always made it right.

We are hopeful you can see the wisdom of this and I urge you to support H 2662.

**TESTIMONY IN FAVOR OF HB 2662**  
**Don Clarkson of Clarkson Construction Company**

I'm Don Clarkson with Clarkson Construction Company in Kansas City, I'm here to testify in favor of HB 2662.

Clarkson Construction, founded in 1880, has been building roads in Kansas since the early 1900's. Over time we have built a reputation as one of the most competent highway contractors to perform work in Kansas. Our company has built projects across the entire state and are currently working on the largest project ever let by KDOT. The project I am referring to is the I-70/I-635 project in Kansas City Kansas.

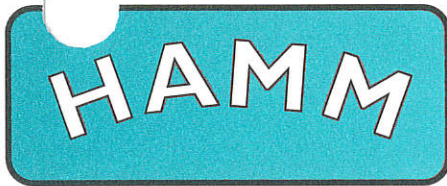
This project was bid by KDOT in September of 2002 and was awarded to Clarkson Construction the following month. After this project was well underway the State imposed a new sales/use tax that went into effect on July 1, 2003. This new unforeseen tax is going to cost our company approximately \$ 225,000. I would like to mention again that we had no knowledge of this tax when we entered into a binding contract with the State of Kansas in October of 2002.

HB 2662 provides a provision to allow contractors to complete their contracts under the same tax rules as when the contracts were bid. We support HB 2662 and urge you to do the same.

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Attachment 2

Date 3-5-04



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## Testimony

**Scott Anderson, Chief Financial Officer  
 Hamm, Inc. of Kansas in Favor of HB 2662**

I am the chief financial officer for Hamm, Inc. in Perry, Kansas and I am here to testify in favor of HB 2662.

Hamm, Inc. is an employee-owned highly integrated company that is engaged in heavy highway construction, asphalt paving, mining, and waste management all located primarily in the State of Kansas. Hamm employs approximately 200 –300 employees and has been doing business in Kansas since it was established 1954.

The heavy highway construction and asphalt paving divisions of Hamm engage in highway contracts with the State of Kansas to build and develop better roadways throughout the State. Each contract Hamm is awarded by the State is won through a competitive bid process against various other contractors.

Prior to July 1, 2003, Hamm had entered into binding contracts with the State of Kansas that were obtained with a competitive fixed price bid. After entering into these contracts, the State imposed new sales/use tax laws effective July 1, 2003. As part of the passage of the new sales/use tax laws that went into effect on July 1, 2003, the use tax rate was increased to include local city and county tax on materials stored, used or consumed in the State of Kansas. The additional local city and county use tax on materials increased the tax rate from the previous flat rate of 5.3%, to a variable rate of more than 8% depending on the jurisdiction.

For Hamm, the unforeseen increase in the use tax rate created a significant negative impact on the completion of these fixed price contracts. These additional taxes simply increased the cost for the materials used on the project, without any change in price of the contract.

Absent a provision, as provided for in HB 2662, to allow the contractor to complete these contracts under the same tax rules as when they entered into the contract, these significant additional taxes imposed will have to be absorbed by the contractor. HB 2662 would provide contractors the ability to complete these contracts in a fair and equitable manner (in which they were originally intended).

Hamm supports the passage of this HB 2662 and urges the committee to favorably consider the bill. Thank you for allowing me to testify and I stand for questions.

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Attachment 3

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# 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  
9:00 a.m., Room 519-S  
Joan Wagon

March 8, 2004  
**House Bill 2696**

Chairman Edmonds and Members of the Committee:

I would like to introduce Jay Befort, one of the Department's Staff Attorneys, who will discuss the details of this proposal. House Bill 2696 provides new language to strengthen and streamline the existing procedures for enjoining the operation of businesses delinquent in their tax payments. This bill is identical to Senate Bill 428, introduced and heard in the Senate Committee on Assessment and Taxation, but not acted upon. Under the new law, the Department can file a civil action in the Shawnee County district court to enjoin a taxpayer from doing business in Kansas, if the taxpayer has not reported or paid sales or withholding taxes for six consecutive months. The new law also empowers the district court to issue a temporary restraining order based on the submission of the secretary's affidavit.

K.S.A. 79-3294a and 79-3630 currently authorize the secretary to bring an action to enjoin an employer found in violation of the Kansas Withholding and Declaration of Estimated Tax Act or a retailer in violation of the Kansas Retailers' Sales Tax Act. The current legislation permits the secretary to seek a restraining order without the requirement of posting a bond. The proposed legislation will streamline the process and define a "seriously delinquent" taxpayer, and in doing so, it provides a clear standard upon which the district court can act when granting the injunction. In addition, the proposal sets out fines for violators of the court's temporary restraining order or the injunction. These penalties would supplement the court's discretion to impose citations for a violator's contempt of its order enjoining the business from operation.

Current practice of the Department of Revenue is to use the injunction process as a remedy of last resort, given the equitable nature of the injunction remedy. We first make numerous efforts at resolving a delinquent account prior to seeking an injunction, including several telephone calls, sending tax statements seeking payment, contacts by revenue agents, tax warrants, and collection through levy, execution, and garnishment. When a business continues to operate without properly remitting employer withholding taxes or sales tax, despite our collection efforts, something more drastic must be done. With this proposal, we will continue to use the injunction process as a final remedy after other collection efforts have been exhausted.

We would be pleased to answer your questions concerning this proposal.

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**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 Wagon

March 8, 2004  
**House Bill 2681**

Chairman Edmonds and Members of the Committee:

House Bill 2681 is intended to ensure that sales tax exemption claims for utilities furnished through a meter (such as gas, water or electricity) are valid and periodically verified by usage study. Under K.S.A. 79-3606(n), utilities "consumed in production" of taxable tangible personal property or services are exempt from sales tax. Last fiscal year, utilities "consumed in production" sales tax exemption claims reduced state sales tax collections by almost \$93 million. We are concerned about the accuracy and validity of many of these claims.

The bill requires a utility customer to submit an engineer study to the utilities provider verifying the portion of the utilities furnished through a meter claimed to be exempt from sales tax. The usage study must be renewed every 5 years (or sooner if operational changes have occurred). Although other states (Texas, Oklahoma, Missouri) have a renewal requirement, Kansas law currently does not require a utility customer to renew its sales tax exemption claim with the utility provider after any time period expires. The utility customer submits a sales tax exemption certificate claiming an exemption (such as electricity "consumed in production") to the utility for a specific utility meter. Once the utility customer obtains the sales tax exemption, the utility provider typically continues to honor it, unless the department determines in an audit of that business that the exemption was not proper. Later, the business may change, but no update or change is made to the exemption claim for that meter. A new business could improperly receive an exemption on utilities purchases that do not qualify. Utility providers do not require or ensure that the exemption is taken off a meter until or unless the Department notifies them to do so.

The bill further provides that no exemption would be allowed for consumed utilities unless the percentage of exempt use through the meter is more than 50%. This would decrease the number of erroneous refunds on utilities "consumed in production" and enable the Department to reallocate resources to other tasks. Currently, businesses can claim utility sales tax exemptions for any portion of the utilities running through one meter, even when the majority of the usage through that meter is taxable. Utilities providers and the Department spend considerable time and effort adjusting and amending returns, issuing refunds, and attempting to validate the exemption claims. This problem has increased as utilities sales tax exemption claims have expanded beyond the manufacturing and processing sectors. This proposal employs a common sense approach to limit the exemption to businesses in which the principal activity is in the

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production, manufacturing processing, mining, drilling, refining or compounding of tangible personal property.

Finally, the proposal provides that refunds to a particular taxpayer account for amounts under \$5 per reporting period would not require payment. Currently, the refund will not be paid only if the amount due is under \$5 for the total owed on the taxpayer account. Likewise, if the taxpayer owes less than \$5, the taxpayer is not assessed. The bill changes the procedure for utility refunds, so that the "less than \$5.00 during any one reporting period" criteria will be used in determining whether a refund will be owed. We would also apply this criteria to determine whether an assessment should be made. This change would save significant refund processing time for the Department's staff.

We estimate that this proposal would result in \$9 million additional state sales tax revenue in fiscal year 2005. The state general fund would increase \$8.6 million and the highway fund \$400,000. The fiscal impact would come from two areas, fewer exemptions claimed on the utility provider returns and fewer refund requests received directly from utility customers or the utility providers on behalf of customers. If this proposal would affect 10% of the exemptions, it would result in the collection of \$9 million annually. Local sales tax receipts would also see an increase of \$2.25 million annually.

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**Testimony Re: HB 2681  
House Taxation Committee  
Presented by Ronald R. Hein  
on behalf of  
Kansas Restaurant and Hospitality Association  
March 8, 2004**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association. The KRHA is the Kansas professional association for restaurant, hotel, lodging and hospitality businesses in Kansas.

KRHA opposes HB 2681 because it eliminates for some members of our industries the sales tax exemption set out in K.S.A. 79-3606(n), which provides an exemption from sales tax for utilities consumed in production. In HB 2681 sales tax exemption for utilities consumed in production would only be applicable if the amount of usage on one meter was in excess of 50% of the meter usage.

HB 2681 appears to conflict with the statutory exemption. Although it can be argued that this section would supersede the exemption statute, at the very least, K.S.A. 79-3606 should have a provision referencing this new bill provision, or the exemption set out in K.S.A. 79-3606(n) should directly eliminate the exemption for those utilities which do not exceed the 50% threshold.

HB 2681 also would have the effect of removing a legitimate business exemption which is otherwise authorized in law. Of greater concern is that the elimination of this exemption would be most applicable to small businesses in general, but specifically to businesses that our association represents.

We understand there may be cost of administration issues for the Department of Revenue that this legislation is attempting to eliminate, but we believe that there are other mechanisms that could eliminate or reduce high administrative costs for smaller businesses which are not as draconian as this legislation.

We also would note that HB 2681 requires the utilization of a professional engineer to conduct the audit study necessary to obtain the exemption in the first place. This provision will have the effect of actually increasing the administrative burden on the taxpayer, and conceivably increasing the administrative burden on the Department of Revenue as well.

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We also note that an individual business can get around the provisions of this legislation by simply using a separate meter for the utilities for those machines utilizing utilities which are actually exempt from sales taxation. Once again, this will be easier and more cost effective for a large business, and tends to be more of a burden on a small business. Without fully understanding why HB 2681 wants to discriminate between large and small businesses in this regard, we simply wish to raise this as a concern that should be addressed by this committee.

Lastly, we have surveyed our membership, and a large number of restaurants and some lodging facilities do not meet the 50% threshold set out in this legislation. Therefore, this bill would appear to be a tax increase for those individual businesses. As we have testified to this committee and to the legislature in recent years, the restaurant, lodging and hospitality industries have been adversely impacted by the post-911 economy to an extent greater than many other businesses. Even assuming that this legislation was good policy, this is definitely not a good time to be attempting to raise taxes on smaller businesses involved in the restaurant, lodging and hospitality industries.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.