

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:45 a.m. on February 11, 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, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Joan Wagon, Secretary, Kansas Department of Revenue
Ron Hein, Kansas Restaurant and Hospitality Association
Philip Bradley, Kansas Licensed Beverage Association
Amy Campbell, Kansas Association of Beverage Retailers
Rebecca Rice, Kansas Clubs and Associates
Richard Cram, Kansas Department of Revenue
Jay Befort, Kansas Department of Revenue

Others attending:

See Attached List.

SB 414—Delinquent taxes precluding renewal of licenses under liquor control act and club and drinking establishment act

Joan Wagon, Secretary, Kansas Department of Revenue, testified in support of **SB 414**. At the outset, she noted, when she first took the position of Secretary, she was particularly shocked by the number of people who collect trust taxes such as sales, withholding, and liquor taxes and simply do not remit them to the Department. She noted that approximately 80% of Kansas taxpayers remit on time and in full. With the completion of the recent tax amnesty program, the Department is stepping up its compliance efforts in order to minimize the amount of delinquent tax liability. **SB 414** is one of the Department's proposals to accomplish that objective. Secretary Wagon explained that Section 1 of the bill requires a liquor licensee to be current in payment of withholding, sales, and liquor taxes relating to the liquor-licensed business before the license can be issued or renewed. Current law requires liquor licenses be current only in respect to liquor tax payment. She noted that a proposed amendment on page 2, line 24, clarifies that the provision applies to the collection of delinquent sales and withholding taxes owed by businesses with liquor licenses. In addition, a proposed amendment on page two, line 31, clarifies that the license non-renewal provisions are not associated with individuals associated with the business who have an outstanding individual tax liability. She explained that Section 2 of the bill amends the Club and Drinking Establishment Act to add the sales tax and withholding tax clearance requirement for issuance or renewal of a club or drinking establishment license. (Attachment 1)

Secretary Wagon introduced Tom Groneman, Director of Alcohol and Beverage Control, and Jeff Scott, Director of Compliance. She explained that both work together with their staffs to ensure that a liquor license is not issued if the liquor taxes are not current. She pointed out that the bill would extend their work to the area of sales and withholding taxes for the corporation or store.

Ron Hein, representing the Kansas Restaurant and Hospitality Association (KRHA), informed the Committee that KRHA is neutral on **SB 414** but supports the concept provided that the provisions are only applicable to the taxes on the business which operates a club or drinking establishment. He noted that the amendments offered by Secretary addressed the concerns KRHA had about the bill. (Attachment 2)

Philip Bradley, Kansas Licensed Beverage Association (KLBA), noted that KLBA supports the goal to recover taxes rightfully owed to the state. KLBA will support **SB 414** if amended further to include all businesses or individuals that receive licenses from the state. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 11, 2004, in Room 519-S of the Capitol.

Amy Campbell, Kansas Association of Beverage Retailers (KABR), testified in opposition to **SB 414**. Ms. Campbell said that the amendments offered by the Department of Revenue are appreciated by KABR; however, they do not address all of KABR's concerns. She noted that the bill does not address Kansas corporations. In addition, the bill does not ensure that taxes owed by a spouse of a liquor store retailer which are unrelated to the liquor license would not interrupt the license renewal. She noted that retail liquor stores do not pay sales tax but pay an enforcement tax on all products sold, and licenses are not renewed if the retailer is behind in the payment of enforcement taxes. The bill would add the requirement that payment of the withholding tax be current. She emphasized that KABR uses data from the Department of Revenue to address problems with compliance. She noted that the Department has not presented data concerning liquor retailers' compliance rate in collecting withholding tax. She emphasized that liquor stores do a good job keeping their tax accounts current. KABR members believe that the bill is unfair because it does not address all state issued licenses. KABR requests that all licensees be held to the same standard for the collection of taxes. (Attachment 4)

In response to committee questions, Richard Cram, Kansas Department of Revenue, informed the Committee that the Department introduced **SB 468** which requires that a long list of professional license renewals be contingent on their being current on tax liabilities.

Rebecca Rice, representing the Kansas Clubs and Associates, stated that Kansas Clubs and Associates is neutral on **SB 414**; however, it supports the amendments proposed by the Department of Revenue. She noted that Section 2 eliminates the requirement to be current on all tax payments before Class A Club licenses are issued to military liquor establishments and to fraternal and benevolent organizations. In her opinion, the exception appears to create a limitation rather than expanding current authority. (Attachment 5)

Mr. Cram stood to address the comments by conferees. As to Ms. Campbell's concern regarding the tax liability of a liquor retailer's spouse, he agreed to amend the bill to make it clear that the tax liability of a spouse of a stockholder, an officer, etc. would not affect the renewal of a liquor license. As to the issue of inclusion of Kansas corporations, he explained that a large chain owned by a foreign corporation, such as Applebee's, currently must artificially set up a Kansas corporation to hold a club or drinking establishment license, even though the parent corporation may be the employer and submit the withholding and sales taxes. This arrangement makes it difficult for the Department to determine the tax status of the business if the foreign corporation sets up the Kansas corporation under a different name. The Kansas corporation may be registered under one account and the business may have a different account with a different federal employee ID number. Thus, the inclusion of Kansas corporations would complicate things for both the licensee and the Department. As to Ms. Rice's concern about singling out benevolent clubs and clubs on military facilities, he referred to page 5, line 24, and explained that they would be subject to the tax clearance provision just as all others.

There being no others wishing to testify, the hearing on **SB 414** was closed.

SB 411—Informal conference procedures related to objections of taxpayer over drug tax assessments

Mr. Cram testified in support of **SB 411**, and introduced Phil Wilkes, the Administrative Appeals hearing officer for drug tax assessment appeals, and Marlea Janes, the staff attorney who handles many of the cases. Mr. Cram explained that the bill moves the administrative appeal process for drug tax assessments from the formal Kansas Administrative Procedures Act (KAPA) hearing statute to the Department's informal conference process used for other major tax types. The change to an informal process would result in an 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. (Attachment 6)

Senator Donovan asked approximately how much drug tax is being collected. In response, Mr. Wilkes said that in Fiscal Year 2003, \$.9 million was collected. In past years, as much as \$1.5 million has been collected. He said that the average appeal takes about one year. The primary reason for the long appeal time is defense attorneys do not want to admit to anything on the drug charge until the criminal case is resolved even though, by statute, the information cannot be used outside the Department.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 11, 2004, in Room 519-S of the Capitol.

There being no other questions and no others wishing to testify, the hearing on **SB 411** was closed.

SB 412—Collection of delinquent taxes

Mr. Cram distributed copies of his written testimony in support of **SB 412**. (Attachment 7) He introduced Jay Befort, a Department staff attorney with legal services, who discussed the provisions of the bill. Mr. Befort explained that the bill simply adds “and personal” to the tax warrant and lien statutes to create a statutory lien interest in favor of the state in personal property of the delinquent taxpayer. He explained that, over the years, the Department has confronted the inability to file a secured claim to attach to the equity in a debtor’s personal property in a bankruptcy context. He emphasized that the goal of the bill is not to obtain the right to take the individual’s property but rather to give the Department the opportunity to file a secured claim in the context of a bankruptcy. With this, the hearing on **SB 412** was closed.

SB 413—Sales tax exemption identification numbers and certificates

Mr. Cram testified in support of **SB 413**. He explained that the organizations affected by the bill are listed on the last page of his written testimony. The bill would require 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. Mr. Cram explained that one of the goals of the Streamlined Sales Tax Project is to reduce the burden on retailers to police the legitimacy of sales tax exemption claims. (Attachment 8)

There being no others wishing to testify, the hearing on **SB 413** was closed.

The meeting was adjourned at 11:50 a.m.

The next meeting is scheduled for February 12, 2004.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: February 11, 2004

NAME	REPRESENTING
Bob Chalkquist	KDOR
Jay Befort	KDOR
Richard Crum	KDOR
Joel Wagon	KDOR
Tom Groneman	KDOR-ABC
JEFF SCOTT	KDOR-TAX
Marlea James	KDOR
Phil Wilkes	KDOR
Nancy Hewitt	KDOR
Laura Graham	KDOR-ABC
Mike Padilla	KDOR-ABC
LARRY R BASK	LKM
Rebecca P	KCAA
Bill Brady	Anheuser-Busch
Heather Grace	Dannron + Associates
Tom Brund	GBBA
Matthew Goddard	Heartland Community Bankers Assoc
Walter New Smith	KMHA
Danille Noel	Johnson County
Cheryl Baker	K5 Newspapers Network



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the Senate Committee on Assessment and Taxation Joan Wagnon

February 11, 2004
Senate Bill 414

Chairman Corbin and Members of the Committee:

The Department of Revenue strongly supports Senate Bill 414. With me today to address questions are Tom Groneman, Director of the Alcohol Beverage Control (ABC) Division, Laura Graham, Assistant Attorney General with ABC, Jeff Scott, Executive Manager of Compliance and Enforcement, and Dedra Platt, Civil Tax Enforcement Manager for the Division of Taxation.

The Department recently concluded a successful tax amnesty program; Phase II brought in \$31 million in past due taxes, \$11.5 million above the projected \$19.5 million. With completion of the amnesty program, we are stepping up our compliance efforts, in order minimize the amount delinquent tax liability. Senate Bill 414 is one of several Department proposals to accomplish that objective.

Section 1

Section 1 amends K.S.A. 2003 Supp. 41-311 to require a liquor licensee to be current in payment of withholding, sales and liquor taxes relating to the liquor-licensed business before the license can be issued or renewed. Current law requires liquor licensees be current only in liquor tax payment. Requiring liquor licensees to remain current in payment of withholding and sales tax will significantly improve tax compliance, increase tax revenue, and enable the Department of Revenue to maintain a more level playing field among liquor licensees.

At the hearing on the House version of this bill, House Bill 2680, in the House Federal and State Affairs Committee on February 9, representatives of the liquor industry raised concerns that under the bill as introduced, a disputed or erroneous tax liability could trigger license revocation. They also raised the question whether delinquent tax liability of a minority shareholder or officer of a liquor licensee could trigger license revocation. We offer a balloon amendment to Senate Bill 414, attached, to address those concerns. Our proposal focuses on collecting delinquent sales and withholding taxes owed by businesses with liquor licenses. If the tax liability is in dispute and under appeal or subject to a current payment plan, the license non-renewal provisions are not triggered. We are also not interested in triggering the license non-renewal provisions simply because an individual associated with the business has an outstanding individual tax liability.

Sales tax is a trust tax. For the privilege of making retail sales in this state, businesses must register with the Department to collect on behalf of the state sales tax from purchasers and remit it on the 25th day following the month of the sale. Similarly, businesses are required to withhold a percentage of their employees' wages and remit those employer withholding taxes to the state on behalf of their employees. Licensees that pocket the sales tax collected from consumers or wages withheld from their employees rather than remitting it to the Department of Revenue are not only misappropriating money from the state. They give themselves an artificial competitive advantage over compliant liquor licensees.

Our recently concluded tax amnesty program highlighted the need for strong tax compliance efforts, in order to keep downward pressure on delinquent tax liability. This proposal addresses tax compliance for liquor licensees. The licensing statute currently does not allow denial of liquor licenses based on noncompliance with sales or withholding tax.

While the Division of Taxation has other ways to collect delinquent taxes, the license renewal process is by far the most cost-effective and least intrusive for the liquor licensee. Our collection efforts include phone calls, letters, assessment notices, tax warrants, bank account levies, garnishments, seizure of money from cash registers and, in some circumstances, seizure and sale of inventory and other property. We have in the past seized retail liquor store inventory. Collecting delinquent taxes through the license renewal process gives the licensee a clear, simple choice: either pay your tax obligations to the state or close your liquor business.

At least 16 states require some sort of tax clearance before issuing or renewing liquor licensees.

Similar successful tax compliance requirements are currently in place in Kansas for:

- Lottery retailers
- Cigarette retailers
- Each director and officer of an organization licensed under the Kansas Pari-mutuel Racing Act
- Pari-mutuel facility owner and facility manager Occupation Pari-mutuel licensees
- Pari-mutuel Concessionaire licensees
- Racing or wagering equipment or services Pari-mutuel licensees

While this proposal will address tax compliance for the liquor licensees, the Department is working to address tax compliance in other areas as well. Legislative Post Audit (LPA) recently audited the Department on motor vehicle sales tax collections. In noting compliance issues with motor vehicle dealers delinquent in payment of sales and withholding taxes, the LPA recommended that the Department use the dealer license revocation procedure to encourage tax-delinquent dealers to become current on their tax obligations. The Department has followed through on that recommendation. We also support House Bill 2648, set for hearing in the House Tax Committee this week, which proposes mandating revocation of a motor vehicle dealer's license if the dealer is sufficiently delinquent in remitting sales tax. We have introduced legislation this session in both the House and Senate (Senate Bill 468, set for hearing in this Committee on February 16) proposing a tax clearance procedure for the renewal of professional licenses, such as for architects, engineers, accountants, doctors, nurses, pharmacists, real estate agents, insurance agents, veterinarians, among others. California, Oregon, Washington, Minnesota, and Missouri employ a tax clearance process for professional licenses. Those states indicate the tax clearance process for licenses is an excellent tax compliance tool.

at the House Federal and State Affairs Committee hearing mentioned earlier, liquor industry representatives suggested that this bill be combined with the other pending proposals for tax clearance processes for licenses. We support this as well.

Section 2

Section 2 amends K.S.A. 2003 Supp. 41-2623 in the Club and Drinking Establishment Act to add the sales tax and withholding tax clearance requirement for issuance or renewal of a club or drinking establishment license.

This section also eliminates the requirement that a corporate applicant for a club or drinking establishment license be a Kansas corporation. Under current law, if an out-of-state corporation, such as a large restaurant chain, wishes to obtain a club or drinking establishment license in order to serve alcoholic drinks with meals, the out-of-state corporation must set up a separate entity as a Kansas corporation to hold the club or drinking establishment license. The same restaurant business has to artificially exist as two entities, both with different FEIN's, with the food sales business holding one FEIN and the alcoholic drink business holding another FEIN. This creates needless complexity and opportunity for confusion and error for both the taxpayer and the Department. For example, the liquor entity might register for liquor taxes but not for sales tax, while the food business entity will register only for sales tax. One entity may be considered the employer and report the withholding taxes on the employees that are working for both entities.

The Kansas entity issue complicates the food sales requirement when a restaurant must set up two entities for liquor licensing purposes. For restaurant clubs, not less than 50% of their gross receipts must be from sales of food for consumption. For drinking establishments subject to the food sales requirement, not less than 30% of the gross receipts must be from sales of food for consumption. If a restaurant's food sales business and liquor business are separate entities with different FEIN's and reporting sales tax from food and liquor tax from drinks under different FEIN's, technically, it becomes impossible for the restaurant to meet the food sales requirements.

Having the liquor tax account and the sales tax account or withholding tax account for the same business under different FEIN's also makes it more difficult for the Department to determine the tax compliance status of the business. The liquor entity may be current in liquor taxes, but the food sales entity may be delinquent in withholding taxes, or vice versa.

A business could attempt to employ someone disqualified to work for a liquor licensee, but could pay the employee and file withholding taxes under another FEIN on the theory that the person technically is not employed by the entity that holds the liquor license.

The Department's goal is to reduce the number of separate FEIN's and tax accounts to a minimum, for administrative efficiency. Elimination of the Kansas Corporation requirement for a liquor license will simplify liquor and tax law administration for the licensee and the Department. An out-of-state corporate restaurant chain will no longer need to artificially create a separate Kansas entity for licensing purposes. All taxes (liquor, sales and withholding) can be reported under one FEIN number, the Department can track compliance easier, and there will be much less paperwork for everyone.

SENATE BILL No. 414

By Committee on Assessment and Taxation

2-2

9 AN ACT concerning alcoholic liquor; relating to licenses; delinquent
10 taxes; amending K.S.A. 2003 Supp. 41-311 and 41-2623 and repealing
11 the existing sections.

12

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

14 Section 1. K.S.A. 2003 Supp. 41-311 is hereby amended to read as
15 follows: 41-311. (a) No license of any kind shall be issued pursuant to the
16 liquor control act to a person:

17 (1) Who has not been a citizen of the United States for at least 10
18 years, except that the spouse of a deceased retail licensee may receive
19 and renew a retail license notwithstanding the provisions of this subsec-
20 tion (a)(1) if such spouse is otherwise qualified to hold a retail license and
21 is a United States citizen or becomes a United States citizen within one
22 year after the deceased licensee's death;

23 (2) who has been convicted of a felony under the laws of this state,
24 any other state or the United States;

25 (3) who has had a license revoked for cause under the provisions of
26 the liquor control act, the beer and cereal malt beverage keg registration
27 act or who has had any license issued under the cereal malt beverage laws
28 of any state revoked for cause except that a license may be issued to a
29 person whose license was revoked for the conviction of a misdemeanor
30 at any time after the lapse of 10 years following the date of the revocation;

31 (4) who has been convicted of being the keeper or is keeping a house
32 of prostitution or has forfeited bond to appear in court to answer charges
33 of being a keeper of a house of prostitution;

34 (5) who has been convicted of being a proprietor of a gambling house,
35 pandering or any other crime opposed to decency and morality or has
36 forfeited bond to appear in court to answer charges for any of those
37 crimes;

38 (6) who is not at least 21 years of age;

39 (7) who, other than as a member of the governing body of a city or
40 county, appoints or supervises any law enforcement officer, who is a law
41 enforcement official or who is an employee of the director;

42 (8) who intends to carry on the business authorized by the license as
43 agent of another;

1 (9) who at the time of application for renewal of any license issued
2 under this act would not be eligible for the license upon a first application,
3 except as provided by subsection (a)(12);

4 (10) who is the holder of a valid and existing license issued under
5 article 27 of chapter 41 of the Kansas Statutes Annotated unless the per-
6 son agrees to and does surrender the license to the officer issuing the
7 same upon the issuance to the person of a license under this act, except
8 that a retailer licensed pursuant to K.S.A. 41-2702, and amendments
9 thereto, shall be eligible to receive a retailer's license under the Kansas
10 liquor control act;

11 (11) who does not own the premises for which a license is sought, or
12 does not have a written lease thereon for at least 3/4 of the period for
13 which the license is to be issued;

14 (12) whose spouse would be ineligible to receive a license under this
15 act for any reason other than citizenship, residence requirements or age,
16 except that this subsection (a)(12) shall not apply in determining eligibility
17 for a renewal license;

18 (13) whose spouse has been convicted of a felony or other crime
19 which would disqualify a person from licensure under this section and
20 such felony or other crime was committed during the time that the spouse
21 held a license under this act; or

22 (14) who does not provide any data or information required by K.S.A.
23 2003 Supp. 41-311b, and amendments thereto; or

24 (15) who is not current in the payment of all taxes imposed pursuant
25 to K.S.A. 41-501 et seq., 79-3294 et seq., 79-3601 et seq., 79-4101 et seq.
26 and 79-41a01 et seq., and amendments thereto, unless such taxes are un-
27 der formal appeal or for which an agreement for the payment of such
28 taxes has been entered into by the department of revenue and the person
29 seeking licensure and such person is current in the payments under such
30 agreement;

31 (b) No retailer's license shall be issued to:

- 32 (1) A person who is not a resident of this state;
- 33 (2) a person who has not been a resident of this state for at least four
34 years immediately preceding the date of application;
- 35 (3) a person who has beneficial interest in the manufacture, prepa-
36 ration or wholesaling of alcoholic beverages;
- 37 (4) a person who has beneficial interest in any other retail establish-
38 ment licensed under this act, except that the spouse of a licensee may
39 own and hold a retailer's license for another retail establishment;
- 40 (5) a copartnership, unless all of the copartners are qualified to obtain
41 a license;
- 42 (6) a corporation; or
- 43 (7) a trust, if any grantor, beneficiary or trustee would be ineligible

related directly to the
business for which the
license is issued and

and if the licensee is
a corporation, partnership,
trust or association, the
individual officers,
directors, stockholders,
partners, managers
or other individual
members shall not
be required to be
current in the
payment of their
own individual taxes
as a condition of
license issuance
or renewal of the
entity license

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Testimony Re: SB 414
Senate Assessment and Taxation Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
February 11, 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 trade association for restaurant, hotel, lodging and hospitality businesses in Kansas.

KRHA is neutral on SB 414 provided that the provisions of this bill are **only** applicable to the taxes on the business which operates a club or drinking establishment. As written, the bill provides that no liquor license shall be issued to a person who is not current on the taxes enumerated in the bill. We have no objection as long as the bill is applicable for taxes that are due by the facility alone and is limited to those itemized in the bill.

However, the KRHA is concerned about the situations which could arise where a minority stockholder, or certain other individuals tied to the business could be delinquent in paying taxes, and the majority stockholder or the individual facility could be penalized for actions over which they have no control. For example, we would be concerned if SB 414 permits the Department of Revenue to reject or not renew a license if a minority stockholder of a corporation seeking a license owed sales taxes for another business.

We have testified previously to committees of the Legislature about this particular problem, and in 2002, SB 465 passed the Senate but died in the House. SB 465 as amended addressed our concerns, but that bill contained language which is not in SB 414, specifically Section 1(b)(2) and (4), ~~attached hereto~~, which made it clear that the obligation to have taxes paid and current is applicable only to the specific business obtaining the license. Since that language is not in SB 414, we would want the bill amended, or a clarification that the language is only applicable to the business itself.

Liquor licensees should not be the only businesses targeted, and we would encourage the legislature to apply similar standards for other business licensees of the state.

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

*not
attached

Senate Assessment + Taxation
2-11-04
Attachment 2



**Kansas
Licensed
Beverage
Association**

President
Tom Intfen

Secretary/Treasurer
Tammy Davis

Vice Presidents
Robert Farha
Glenda Dewey
Jim Hendricks
James Fager
Curt Melzer
Richard Markle
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Senate Assessment and Taxation- SB-414
Chairman, Senators and Staff,

February 11, 2004

SB-414 has a worthy purpose; to recover taxes rightfully owed our State. The KLBA supports that goal. In fact, SB-345 was introduced in the 2001/2002 Session to accomplish this very purpose. In our associations testimony at that time we raised 2 points that the Senate Federal and State Affairs committee found to have merit and acted upon.

First that the delinquent taxes in question must be those that apply directly to this business which holds this license.

Second, that this condition for renewal of licenses and permits, controlled by the state, should apply to all of the businesses and individuals that the state issues licenses/permits to, and further that these should be treated equally, enacted at the same time and in the same manner.

A third concern was raised and the Committee determined it to also have merit. That if only one stockholder in a corporation operating this license, was delinquent that he not penalize the entire business.

The remedies that the Senators adopted follow;

For the First they added this clause,

The provisions of paragraph (1) of this subsection shall apply only to taxes related directly to the business for which the license is issued.

For the second they requested that a new bill be drafted to include all businesses or individuals that receive licenses/permits from the State. That bill did not appear in the last session. We ask you to include these in one bill.

And third they adopted this language.

If the licensee is a corporation, partnership, trust or association, the individual officers, directors, stockholders, partners, managers or other individual members shall not be required to be current in the payment of the taxes specified in paragraph (1) of this subsection.

We support these corrections and would ask the committee to do the same. We support all taxes owed being paid on time and in full by all of our citizens. In the hearing Monday on HB-2860 the DOR expressed interest in these amendments and combining this proposal with SB-468. With those changes we could support this proposal. I have attached the bill and supplemental from 2001/2002 session for your convenience.

Thank you for your time.

Philip Bradley
Executive Director

Senate Assessment + Taxation
2-11-04
Attachment 3

AN ACT concerning the liquor control act and the club and drinking establishment act; relating to renewal of licenses issued thereunder; amending K.S.A. 41-327 and repealing the existing section.

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

Section 1. K.S.A. 41-327 is hereby amended to read as follows: 41-327. Any licensee may renew his license at the expiration thereof if he is then (a) A license may be renewed at the expiration thereof, if the applicant for renewal is qualified to receive a license and the premises for which such renewal license is sought are suitable for such purpose.

(b) (1) Except as specifically provided by this subsection, no license shall be renewed unless, at the time of renewal, the licensee seeking renewal of the license is current in the payment of all taxes imposed pursuant to K.S.A. 41-501 et seq., 79-3294 et seq., 79-3601 et seq., 79-4101 et seq. and 79-41a01 et seq., and amendments thereto.

(2) The provisions of paragraph (1) of this subsection shall apply only to taxes related directly to the business for which the license is issued.

(3) The provisions of paragraph (1) of this subsection shall not apply to taxes which are under formal appeal or for which an agreement for the payment of such taxes has been entered into by the licensee and the department of revenue and the licensee is current in the payments under such agreement.

(4) If the licensee is a corporation, partnership, trust or association, the individual officers, directors, stockholders, partners, managers or other individual members shall not be required to be current in the payment of the taxes specified in paragraph (1) of this subsection.

New Sec. 2. (a) A license may be renewed at the expiration thereof, if the applicant for renewal is qualified to receive a license and the premises for which such renewal license is sought are suitable for such purpose.

(b) (1) Except as specifically provided by this subsection, no license shall be renewed unless, at the time of renewal, the licensee seeking renewal of the license is current in the payment of all taxes imposed pursuant to K.S.A. 41-501 et seq., 79-3294 et seq., 79-3601 et seq., 79-4101 et seq. and 79-41a01 et seq., and amendments thereto.

(2) The provisions of paragraph (1) of this subsection shall apply only to taxes related directly to the business for which the license is issued.

(3) The provisions of paragraph (1) of this subsection shall not apply to taxes which are under formal appeal or for which an agreement for the payment of such taxes has been entered into by the licensee and the department of revenue and the licensee is current in the payments under such agreement.

(4) If the licensee is a corporation, partnership, trust or association, the individual officers, directors, stockholders, partners, managers or other individual members shall not be required to be current in the payment of the taxes specified in paragraph (1) of this subsection.

(c) This section shall be part of and supplemental to the club and drinking establishment act.

Sec. 3. K.S.A. 41-327 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

SESSION OF 2002 SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE BILL NO. 465

As Recommended by Senate Committee on Federal and State Affairs

Brief*

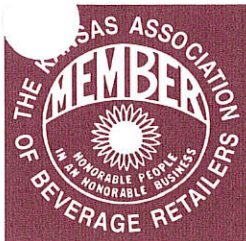
Sub. for SB 465 would amend the Liquor Control Act to require that liquor licensees must be current in the payment of withholding, sales, and liquor taxes related to the licensed liquor business before the license can be renewed. Current law requires that liquor licensees must be current only in the payment of liquor taxes. The provision would apply only to taxes related directly to the business for which the license is issued. The provision would not apply to taxes under formal appeal or a payment agreement, or to the taxes of individual members of a corporation, partnership, trust, or association.

The Senate Committee introduced a substitute bill to include language of an agreement between the Director of Alcoholic Beverage Control (ABC) and liquor industry members.

Background

The Director of ABC requested SB 465 (and the language of the substitute bill) to improve tax compliance, increase tax revenues, and better enable ABC to regulate the liquor industry.

The fiscal note prepared by the Division of the Budget states that passage of the bill would have a negligible fiscal effect on state revenues.



The Kansas Association of Beverage Retailers

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Martin Platt, President

Amy A. Campbell, Executive Director

Senate Assessment and Taxation Committee

January 11, 2004

Amy Campbell // ~~John Davis~~, Imm. Past President

Mr. Chairman and Members of the Committee, I am speaking to you today on behalf of the Kansas Association of Beverage Retailers. Although there are parts of SB 414 which have been improved since 2002, it is unfortunate that we are still unable to support passage of this bill.

KABR fully supports the collection of these revenues. Retailers expect the agency to assist the industry in maintaining an even playing field in the marketplace by enforcing the laws equally. The members of KABR support efforts which strengthen the relationship between the licensee and the State. As retailers support the State by collecting and remitting various categories of taxes, the State should support retailers by promoting positive communication and education and applying enforcement policies evenly.

This bill is an improvement over the one proposed in 2002. Unfortunately, not all of our concerns about this proposed statutory requirement have been addressed by the drafters of the bill. KABR supports adding language which specifies the taxes to be collected are directly related to the business for which the license has been issued. It would not be proper to place a license renewal in jeopardy for unrelated debts. We have been assured that this is the intent of the legislation.

It is unfair that this proposal does not attempt to reject all State issued licenses for nonpayment of taxes. If this is an attempt to target liquor stores for collections, then we are interested in the numbers which show that collections from liquor stores have become a problem for the department.

Retail liquor stores have been through detailed audits which served to bring the stores into excellent compliance. In fact, several stores were rightfully shut down. Liquor stores have been through more extensive examination than other retail operations as far as tax collections are concerned. We should not be punished for delinquencies by other types of licensees.

Have these audit efforts been made for other types of licensed businesses?

Sharing department data will also assist our association in educating our members to meet their obligations. KABR works very closely with the Division to maintain our positive position as the responsible sellers of alcoholic beverages. The last time we were able to review a report, the liquor stores were doing a good job keeping their accounts current. We request the department's support to be able to maintain those positive numbers in the future. Viewing tax payment reports by license and tax categories and distributing this information to our members can go a long way in maintaining awareness for licensees.

KABR respectfully requests that all licensees be held to the same standard for the collection of taxes. The bill does not include retail licensees which sell cereal malt beverages. There does not seem to be a distinct reason for this omission. KABR would support the addition of language permitting the Department of Revenue to enforce similar requirements for other licenses or cereal malt beverage stamps.

We want to thank the agency for visiting with us about this bill - unfortunately, we did not have the opportunity to work with the agency prior to the bill being introduced and scheduled for hearing.

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**TESTIMONY PRESENTED TO
THE SENATE TAX COMMITTEE
re: SB 414**

February 10, 2004

**by: Rebecca Rice, Legislative Counsel
Kansas Clubs and Associates**

Mr. Chairman and members of the committee, my name is Rebecca Rice and I appear before you today on behalf of the Kansas Clubs and Associates to express opposition to SB 414.

We have opposed similar legislation in the past for this reason: There is no evidence – of which we are aware – that supports identifying liquor licensees as more likely than other state licensees to fail to pay taxes owed. We believe that liquor licensees are being selected for this differential treatment because it is popular to segregate these business people with harsh legislative action. We believe the distinction is unwarranted and will lessen the trust between two partners – the state and the licensee - who are charged with the same assignment: maintenance of an orderly marketplace for a heavily regulated product.

We are told it is current ABC practice to withhold liquor licenses if liquor taxes are not current. However, SB 414 ignores the nexus between the tax levied and the license issued. SB 414 appears to require that all withholding or sales taxes owed by any 25% stockholder or spouse of a liquor licensee, must be current.

It is sometimes – if not regularly - impossible to control the business and personal decisions of business associates and spouses. Unless the state intends to grant licensees the authority to control the personal and business finances of business associates – some of who might be siblings, parents or other relatives – and spouses, the state will be granting undue power to those same associates and spouses over the licensee. It is never wise to grant a third party undue power over individuals who are licensed to maintain the orderly sale of alcoholic beverages.

Oddly, Sect. 2 (page 5) eliminates the requirement to be current on all tax payments before Class A club licenses are issued to military liquor establishments, fraternal and benevolent organizations. That exception appears to *create* a limitation rather than expand on current authority. We believe it is current ABC practice to prohibit issuance of licenses if liquor taxes are not current, regardless of location or the type of licensee. We are uncertain how this exception adds to an orderly marketplace for alcohol beverage sales.

We ask that you vote no on SB 414. If there is a rational basis for withholding state-issued licenses when unrelated taxes are not current, we believe it is appropriate for liquor licensees to be included in legislation that includes all state-issued licensees – hospitals, nursing homes, CPA's, realtors, etc. – rather than be segregated and held out as less worthy than other state-issued licensees.

Thank you, Mr. Chairman. We are available for questions.

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K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

February 11, 2004

Testimony to the Senate Assessment & Taxation Committee
10:30 a.m., Room 519-S
Joan Wagnon

Senate Bill 411

Chairman Corbin and Members of the 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 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 is 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.



K A N S A S

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KATHLEEN SEBELIUS, GOVERNOR

Testimony to the Senate Committee on Assessment and Taxation Joan Wagnon

February 11, 2004

Senate Bill 412

Chairman Corbin and Members of the Committee:

Senate Bill 412 proposes to add language to the tax warrant and lien statutes, specifically K.S.A. 79-3235 and 79-3617, which govern the filing of tax warrant to secure the payment of a number of the taxes administered by the Kansas Department of Revenue, including income, withholding, sales, use, liquor drink and enforcement taxes. The proposed language will create a statutory lien interest in favor of the state of Kansas in personal property of the delinquent taxpayer.

Currently, the tax warrant statutes, K.S.A. 79-3235 and 79-3617, for income and withholding and sales and use taxes provide for the creation and perfection of a lien against the real property of the debtor upon filing of the tax warrant with the district court clerk. To perfect a lien against the personal property of the taxpayer requires that agents or the county sheriff seize the personal property of the taxpayer pursuant to the authority granted under the two statutes. The proposed language would afford the state of Kansas a lien interest in the equity in the personal property of the taxpayer without the necessity of costly seizures, storage and subsequent sale of the property.

The bankruptcy context illustrates a specific advantage of this proposal. Once in bankruptcy, the automatic stay prohibits the seizure of the debtor's property to perfect a lien in the debtor's personal property. A lien interest, established prior to the bankruptcy, in the equity in the personal property of the debtor would enable the secretary of revenue to assert a secured claim against such equity in the personal property of a bankruptcy debtor without requiring the seizure of the property. The result is an enhanced recovery of taxes that may otherwise be subject to discharge in the event the taxes are beyond the bankruptcy priority claim classification period or are otherwise unsecured.

It should be noted the proposed lien against any equity in the personal property of the debtor would still be subject to any prior properly perfected security interests or liens of other creditors including those of the counties for personal property taxes.

We would be open to questions of the Committee concerning the proposed language to the two statutes, K.S.A. 79-3235 and 79-3617.

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K A N S A S

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OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the Senate Committee on Assessment and Taxation Joan Wagnon

February 11, 2004
Senate Bill 413

Chairman Corbin and Members of the Committee:

Senate Bill 413 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 apply for 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.