

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:30 A.M. on January 19, 2006 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Kansas Legislative Research
Martha Dorsey, Kansas Legislative Research
Gordon Self, Revisor of Statutes Office
Judy Swanson, Secretary

Conferees appearing before the committee:

Richard Cram, Department of Revenue
Jeff Scott, Department of Revenue
Jim Conant, Department of Revenue

Others attending:

See attached list.

Senator Laura Kelly requested introduction of a bill concerning the adoption tax credit. Senator Donovan moved that the bill be introduced. Senator Lee seconded the motion, and the motion passed.

Chairman Allen, on behalf of Senator Pete Brungardt, requested the re-introduction of the 2005 Session **HB 2022**. Senator Donovan moved that the bill be introduced. Senator Lee seconded the motion, and the motion passed.

Allie Devine, Kansas Livestock Association, requested the introduction of a bill to make a technical correction in the hay barn exemption law. Senator Apple moved to introduce the bill. Senator Goodwin seconded the motion, motion passed.

Ms. Devine requested the introduction of another bill concerning the carry over of a tax credit refund. Senator Lee moved to request the introduction of the bill. Senator Donovan seconded the motion, and the motion passed.

Hearing on: SB 357:—Penalties for failure to file or filing an incorrect or insufficient income tax return

Richard Cram, KDOR, testified this bill would provide a penalty when a taxpayer claims a refund after failing to file an income tax return. (Attachment 1) During committee discussion, he said on the average it costs the Department of Revenue approximately \$125 to pursue someone who has not filed. There were 202,000 non-filers last year. Most of the non-filers owed the state money.

Hearing on **SB 357** was closed.

Hearing on: SB 358:—Electronic filing of returns and electronic funds transfer for payments required in certain circumstances

Richard Cram, KDOR, testified **SB 358** would allow KDOR to accomplish more work with fewer staff by lowering the threshold of requiring electronic payment of sales tax liability or employer's withholding tax liability from \$100,000 to \$32,000 annually. (Attachment 2) The bill would also lower the threshold requiring an employer to file copies of the W-2s with KDOR electronically from 250 employees to 50 employees. Senators Lee and Pine expressed concern that small businesses might not have the capacity to file electronically. Mr. Cram said 10,800 accounts would go from paper check payment to electronic payment under this bill.

Hearing on **SB 358** was closed.

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:30 A.M. on January 19, 2006 in Room 519-S of the Capitol.

Hearing on: **SB 359—Eliminate monetary limitations on tax refund funds**

Richard Cram, KDOR, said this bill impacts KDOR's and the Division of Accounts and Reports current capitalization limits. (Attachment 3) Jim Conant, KDOR, gave examples of why the bill was needed. He said it is a processing efficiency issue.

Hearing on **SB 359** was closed.

Senator Schmidt made a motion to approve the Minutes of the January 18 Committee meeting. Senator Goodwin seconded the motion, motion passed.

Being no further business, the meeting adjourned at 11:15 a.m.



K A N S A S

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE
OFFICE OF POLICY AND RESEARCH

Testimony to the Senate Committee on Assessment and Taxation
Richard Cram

January 19, 2006

Senate Bill 357—Penalty on Non-filing Return When Refund Sought

Senator Allen and Members of the Committee:

Senate Bill 357 would amend K.S.A. 79-3228(d) to provide a penalty (50% of the refund, up to a maximum of \$250) when a taxpayer claims a refund after failing to file an income tax return (or filing an insufficient return) within 20 days after receiving notice from the Department to file such return. This would provide penalties for failure to timely (or sufficiently) file an income tax return, whether a balance is due or not.

Under current law, K.S.A. 2005 Supp.79-3228(c) provides for late penalties for failure to timely file an income tax return of 1% of the unpaid balance due for each month past due, up to a maximum 24% of the balance, plus interest. K.S.A. 2005 Supp. 79-3228(d) provides a penalty of 50% of the balance due plus interest for failure to file a return, or filing an insufficient return, within 20 days after the director of taxation provides notice of such failure. Because these non-filer penalties are based on a percentage of the balance due, there are no penalties imposed if the taxpayer failing to file a return is due a refund. This may occur when the taxpayer's employer remits employer withholding tax attributable to the taxpayer's wages, but the taxpayer fails to file a return and claim any refund of withheld tax. Later, after the department has identified the taxpayer as failing to file a return, the department will begin the time-consuming process of notifying the taxpayer that a return is past due and issuing an estimated assessment against the taxpayer. This may result in the taxpayer pursuing an administrative appeal of the estimated assessment. If the taxpayer eventually files a late return establishing that a refund is due, the department has no authority to impose a penalty, even though scarce resources were consumed in notifying and following up with the taxpayer to get the return filed, and possibly resolving an administrative appeal.

Attachment A describes the workflow within the department after a non-filer is identified. As this indicates, department resources must be used in tracking down non-filers, whether a refund is due or not. Providing a penalty for non-filers, whether a refund is due or not, should encourage timely filing of returns and reduce the number of non-filers.

We encourage the Committee to recommend this bill favorably for passage.

Non-filer Workflow

INDIVIDUAL INCOME TAX

Non-Filer Process

Non-Filer Initial Examination State

A taxpayer is identified as a non-filer when the system cannot find a return on file.

A first letter (TNFITHR) is sent out to the taxpayer. At this point the case is manually routed and a 30 day hold is placed on the case.

Associate Examination A

This state is for cases which have already been sent an initial contact . An associate reviews the case by checking ATP/ACM to determine if the customer filed a return.

If the return is filed for the wrong amount, the case is routed to an Outgoing Phone Call Campaign for contact. If no return is filed, but the customer in question has contacted the department with a promise to resolve the case, the associate should generate a Broken Promise to Resolve Letter (TBPR) and route the case to an Outgoing Phone Call Campaign for contact with a 10 day hold.

If a return has been filed for the proper amount and the customer is compliant, the associate would make the case inactive.

If the customer has not responded, the case is routed to an Outgoing Phone Call Campaign, if a valid phone number exists. If the case does not have a valid phone number, a final assessment is sent to customer.

If an associate needs more information from the customer in order to make a determination about the compliance of the customer, the associate generates the Request for Additional Information Letter (TADINFO) and places a hold on the case for 30 days.

Outgoing Phone Call Campaign

This state is for cases which have already been sent an initial contact letter and have been through Associate Examination State A. A case will reside in the Outgoing Phone Call Campaign for either 30 days or 3 phone call attempts.

An associate will place an outgoing call to the customer in question, requesting they file a return or to correct the discrepancy. If the customer indicates they have or will file, the associate should document the conversation in history text and route the case to the Final Assessment state with a 30 day hold.

Final Assessment State:

This state is for cases which have already been sent an initial letter and have been contacted through a call campaign.

An associate reviews the case to determine if the customer filed a return. If a return was filed for the proper amount and the customer is compliant, the associate makes the case inactive.

If the customer has not responded A Final Assessment Notice (FSNONFIL) is sent to the customer indicating the tax, penalty and interest that is due. The Associate would prepare a tax assessment and suspend Billing for 60 days.

Review State:

After the 60 days have expired, if the customer has not responded the case is referred to Collections. If a return was filed for the proper amount , the assessment is reversed and the return posted. If the customer paid the balance with the return, the case is made inactive. If the customer owes a balance, the case is sent to collections for payment. If the return results in a refund, the refund is issued.



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January 19, 2006

Senate Bill 358—E-File Readiness

Senator Allen and Members of the Committee:

Senate Bill 358 proposes a key part of the department's effort to move tax returns and payments from a paper to an electronic environment. Given the pressure on state agencies to complete more work with less staff, movement to the electronic environment is essential to producing the operational savings necessary to accomplish that. The bill would amend K.S.A. 75-5151 to lower the threshold for requiring electronic payment of sales tax liability or employers' withholding tax liability from \$100,000 in total sales or withholding tax liability in any calendar year, to \$32,000 in any calendar year. We believe this would reduce the volume of checks and vouchers that department personnel must process when paper sales and withholding tax payments are received. Whenever sales tax or withhold tax is paid by check, that payment must be accompanied by a paper voucher, which has the name, current address and taxpayer I.D. number for the taxpayer, so that the payment is properly credited to the correct account. In addition, the checks must be endorsed and physically deposited in the bank before any funds are actually transferred for payment. With electronic payment, the state receives the funds instantly, they are credited to the correct account and no checks, vouchers, or human intervention is needed to be processed, producing large timesavings for the department and efficient deposit into the State Bank for quick accessibility.

Attached is a requested balloon amendment to Section 2 of Senate Bill 358, deleting that section and substituting in its place an amendment to K.S.A. 79-3299, giving the department express authority to promulgate rules and regulations concerning the requirement that an employer must annually file copies of W-2 statements with the department. Under current federal guidelines, employers are required to file W-2's electronically with the federal government, when 250 or more employee records are involved. The department follows those federal guidelines. The department anticipates developing rules and regulations that would lower the threshold to 50 or more employee records when the employer is required to file electronically copies of the W-2's with the department. This bill would provide the department express regulatory authority to set this lower threshold for electronic filing of W-2 records. Prompting more employers to file W-2's electronically will provide the department access to this information, which can efficiently be used in electronic data-matching discovery operations to identify income tax non-filers. We urge the Committee's recommendation of this bill favorable for passage.

SENATE BILL No. 358

By Committee on Assessment and Taxation

1-12

9 AN ACT concerning taxation; relating to filing certain returns and re-
10 mitting tax payments by electronic means; amending K.S.A. 2005
11 Supp. 75-5151 and 79-3298 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2005 Supp. 75-5151 is hereby amended to read as
15 follows: 75-5151. The secretary of revenue may require, consistent with
16 sound cash management policies, that any taxpayer whose total sales tax
17 liability exceeds ~~\$100,000~~ \$32,000 in any calendar year, any taxpayer
18 whose total withholding tax liability exceeds ~~\$100,000~~ \$32,000 in any cal-
19 endar year, and any person owing any taxes or fees in connection with
20 any return, report or document other than for sales tax or withholding
21 tax liability, shall remit their tax liability by electronic funds transfer no
22 later than the date required for such remittance, except that the secretary
23 may adopt rules and regulations prescribing alternative filing and payment
24 dates not later than the last day of the month in which the tax was oth-
25 erwise due. Electronic funds transfers may be made by wire transfers of
26 funds through the federal reserve system or by any other means estab-
27 lished by the secretary, with the approval of the state treasurer, which
28 insures the availability of such funds to the state on the date of payment.
29 Evidence of such payment shall be furnished to the secretary on or before
30 the due date of the tax as established by law. Failure to timely make such
31 payment in immediately available funds or failure to provide such evi-
32 dence of payment in a timely manner shall subject the taxpayer to penalty
33 and interest as provided by law for delinquent or deficient tax payments.
34 All sales and use tax remittances from model 1, 2 and 3 sellers must be
35 remitted electronically. Any data that accompanies a remittance must be
36 formatted using uniform tax type and payment type codes approved by
37 the secretary.

38 ~~Sec. 2. K.S.A. 2005 Supp. 79-3298 is hereby amended to read as~~
39 ~~follows: 79-3298. (a) Every employer, payer, person or organization de-~~
40 ~~ducting and withholding tax shall remit the taxes and file returns in ac-~~
41 ~~cordance with the following provisions:~~

42 (1) ~~Whenever the total amount withheld exceeds \$100,000 in any~~
43 ~~calendar year, the employer, payer, person or organization deducting and~~

Insert
attached
amendment
to K.S.A.
2005 Supp.
79-3299(a)

1 withholding tax shall remit the taxes withheld in accordance with the
2 following schedule: Each calendar month shall be divided into four re-
3 mittance periods that end on the 7th, 15th, 21st and the last day of such
4 month. If at the end of any one or all of such remittance periods the total
5 undeposited taxes equal or exceed \$667, the taxes shall be remitted within
6 three banking days. Saturdays, Sundays and legal holidays shall not be
7 treated as banking days.

8 (2) Whenever the total amount withheld exceeds \$8,000 but does not
9 exceed \$100,000 in any calendar year, the employer, payer, person or
10 organization deducting and withholding tax shall remit the taxes withheld
11 for wages paid during the first 15 days of any month on or before the
12 25th day of the month. The employer, payer, person or organization de-
13 ducting and withholding tax shall remit the taxes withheld for wages paid
14 during the remainder of that month on or before the 10th day of the
15 following month.

16 (3) Whenever the total amount withheld exceeds \$1,200 but does not
17 exceed \$8,000 in any calendar year, the employer, payer, person or or-
18 ganization deducting and withholding tax shall remit the taxes withheld
19 during any month on or before the 15th day of the following month.

20 (4) Whenever the total amount withheld exceeds \$200 but does not
21 exceed \$1,200 in any calendar year, the employer, payer, person or or-
22 ganization deducting and withholding tax shall remit the taxes withheld
23 in any calendar quarter on or before the 25th day of the first month
24 following the end of that calendar quarter.

25 (5) Whenever the total amount withheld does not exceed \$200 in any
26 calendar year, the employer, payer, person or organization deducting and
27 withholding tax shall remit the taxes withheld during that year on or be-
28 fore January 25 of the following year.

29 (b) Each remittance required under the provisions of subsection (a)
30 shall be accompanied by a Kansas withholding tax remittance form pre-
31 scribed and furnished by the director.

32 (c) Every employer, payer, person or organization deducting and
33 withholding tax and making remittances pursuant to subsection (a) shall
34 file a return on a form prescribed and furnished by the director for each
35 calendar year on or before the last day of February of the following year.
36 *If an employer, payer, person or organization files a return which reports*
37 *withholding for 50 or more employees or payees, the return shall be filed*
38 *electronically.*

39 (d) The excess of any remittance over the actual taxes withheld in any
40 withholding period shall be credited against the liability for following
41 withholding periods until exhausted. A refund shall be allowed in accord-
42 ance with K.S.A. 79-32,105, and amendments thereto, where an over-
43 payment cannot be adjusted by an offset against the liability for a sub-

1 ~~sequent withholding period.~~

2 ~~(e) For purposes of determining filing requirements, determinations~~
3 ~~of amounts withheld during a calendar year by employers, payers, persons~~
4 ~~or organizations deducting and withholding tax shall be made by the di-~~
5 ~~rector upon the basis of amounts withheld by those employers, payers,~~
6 ~~persons or organizations during the preceding calendar year or by esti-~~
7 ~~mates in cases of employers, payers, persons or organizations having no~~
8 ~~previous withholding histories. The director is hereby authorized to mod-~~
9 ~~ify the filing schedule for any employer, payer, person or organization~~
10 ~~deducting and withholding tax when it is apparent that the original de-~~
11 ~~termination was inaccurate.~~

12 ~~(f) Whenever the director has cause to believe that money withheld~~
13 ~~by an employer, payer, person or organization deducting and withholding~~
14 ~~tax pursuant to this act may be converted, diverted, lost, or otherwise not~~
15 ~~timely paid in accordance with this section, the director shall have the~~
16 ~~power to require returns and payment from any such employer, payer,~~
17 ~~person or organization at any time at more frequent intervals than pre-~~
18 ~~scribed by this section in order to secure full payment to the state of all~~
19 ~~amounts withheld by such employer, payer, person or organization in~~
20 ~~accordance with this act.~~

21 ~~Sec. 3. K.S.A. 2005 Supp. 75-5151 and 79-3298 are hereby repealed.~~

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

9

79-3299. Same; employers' annual statement; furnishing to employee; penalty for failure. (a) Every employer, payer, person or organization deducting and withholding tax, on or before January 31 of each year, shall prepare a statement for each employee or payee on a form prescribed by the director stating the amount of wages or payments other than wages subject to Kansas income tax paid during the preceding year, the total amount of tax withheld, if any, from such wages or payments other than wages by the employer, payer, person or organization pursuant to this act and such other information as may be prescribed by the director. One copy of such statement shall be filed by the employer, payer, person or organization with the division of taxation on or before the last day of February of each year, in accordance with rules and regulations of the secretary of revenue. Two copies of such statement shall be given to the employee or payee concerned, one of which will be filed by the employee or payee with the tax return required by this chapter.

(b) In the case of an employee whose employment is terminated before the end of a calendar year, the statement required by subsection (a) may be mailed at the time provided in that subsection to the last known address of the employee, or issued at the time of the last payment to the employee, at the employer's option.

(c) Any employer, payer, person or organization deducting and withholding tax who intentionally fails to furnish a statement to an employee or payee as required under the provisions of subsections (a) and (b) shall be guilty of a nonperson misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$100 for each such offense.

(d) The annual statement of wages and salaries paid and amount withheld required by this section shall be in lieu of the annual information return required under K.S.A. 79-3222 and amendments thereto.



K A N S A S

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DEPARTMENT OF REVENUE
OFFICE OF POLICY AND RESEARCH

KATHLEEN SEBELIUS. GOVERNOR

Testimony to the Senate Committee on Assessment and Taxation
Richard Cram

January 19, 2006

Senate Bill 359—Eliminating Caps on Various Refund Funds

Senator Allen and Members of the Committee:

KDOR administers numerous refund funds for the purpose of returning overpayments of tax to individuals and businesses. These funds are not appropriated and for expenditure purposes are considered “no limit” funds. However, the underlying statutes that create the various refund funds impose capitalization limits on the amount which can be in a fund at any given time. Most of these statutes were enacted many years ago and the capitalization limits are not consistent with the dollar volume flowing through the funds in today’s environment. This proposal would eliminate the capitalization limits on all refund funds to allow refunds to flow on an as-needed basis without violating the restrictions found in current law. Attached please find a list of the refund funds, statutory caps sought to be eliminated, and statutes sought to be amended in this proposal.

This proposal primarily impacts KDOR and the Division of Accounts and Reports (A&R). Both agencies are bound by the current capitalization limits, causing extra work when daily refund flow exceeds the capitalization limit on certain funds. The most recent example involved a refund of motor carrier property tax authorized by the Special Claims Committee in an amount larger than the capitalization limit on the Motor Carrier Property Tax Refund Fund. A&R advised that it could not process the refund under current law, requiring the use of a proviso in an appropriations bill to temporarily override the limit. This scenario is likely to occur again with this and other refund funds, emphasizing the need for a general cleanup of these statutes.

We encourage the Committee to recommend Senate Bill 359 favorable for passage.

	Fund	Authorized Balance	Statute
Cigarette Tax Refund Fund	9033	10,000.00	79-3311
Mtr. Fuel / Sp. Fuel Tax Refund Fund	9035	1,000,000.00	79-3461
Corp / Ind. Inc. / Withholding	9038	4,000,000.00	79-32,105
Sales Tax Refund Fund	9039	100,000.00	79-3620
Consumers / Retail / RC Auto Lease	9040	200,000.00	79-3710
PVD Mtr. Carrier	9042	5,000.00	79-6a09
Transient Guest Refund Fund	9066	5,000.00	12-1694a
Bingo Refund Fund	9071	10,000.00	79-4711
Transient Guest Refund Fund	9074	5,000.00	12-16,100
Inheritance (Estate Tax Refund)	9082	50,000.00	79-15,113
Oil & Gas Mineral	9121	50,000.00	79-4227
LP Motor Fuels Refund Fund	9123	1,000,000.00	79-3491a
Local Alcoholic Liquor Refund Fund	9124	10,000.00	79-41a09