

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on March 22, 2007 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, Office of Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Secretary Wagon, Department of Revenue
Richard Cram, Department of Revenue
Steve Stotts, KDOR
Mark Beshears, Sprint
Marlee Carpenter, KS Chamber of Commerce (written only)
John T. Frederick, The Boeing Company (written only)

Others attending:

See attached list.

The Chairman called on Representative Bowers, who introduced her daughter, Haley Bowers, a 9th grade student, who was on spring break.

HB 2548 - Social Security number or tax identification number required for licensure, certification or registration with state authorities.

The Chairman said that they were going to briefly return to **HB 2548**, for clarification of income tax compliance percentages. Steve Stotts, KDOR, distributed a chart on the Compliance Enforcement Discovery Project, that reflects cumulative data from its inception in 2004 (Attachment 1). The Department has processed 418,624 licensee's, and \$1,098,684 has been refunded. The total of \$9,784,531 was discovered, of which \$6,708,673 is in the bank, with the remainder amount being paid in installments. Steve Stotts said that the Board of Healing Arts has a 6.1% noncompliance rate currently.

Representative Crum said lengthy discussions had occurred yesterday while working on **HB 2548** based on some serious accusations that a high percentage of health care providers, especially physicians and optometrists, do not pay their taxes. He questioned if KDOR had a good explanation why 37% percent of physicians and 33% of optometrists don't pay their taxes. He pointed out that the new data, before them, reflected only **0.3%** of optometrists were in noncompliance.

Secretary Wagon said the original report, compiled in 2005, was based on membership data from licensing boards and compared to KDOR tax records. Shortly after, that report was refined with respect to out-of-state physicians. The Department found that there were many professionals that held Kansas' licenses, however, did not earn income in Kansas thus had no reporting requirements. When they pulled those numbers out, the percentages changed significantly. They have since continued to refine their reporting process and the licensing boards had to provide cleaner information. She stated that the current report is the mature process, rather than what happened in the beginning. She said that Representative Crum was right, that releasing that early information had cast an unnecessarily negative picture.

HB 2590 - An act concerning sales taxation; relating to definitions; exemptions; exemption certificates; errors in collection, relief of liability; jurisdiction and rate database.

Secretary Wagon, KDOR, made two points: 1) The streamlined sales tax (SST) has been in effect since 2003. It was developed by a group of states, with the assistance of the National Conference of State Legislators, National Governor's Association, The Multi-state Tax Commission and the Federated of Tax Administrators. The purpose was to put a voluntary system in place to collect the sales tax that was escaping

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on March 22, 2007 in Room 519-S of the Capitol.

taxation from internet sales. This is a tax that is due and owing, called a use tax in Kansas. Retailers do not have a duty to collect because they are out of state. 2) All of the changes and proposals in **HB 2590** are from the business community, as amendments to the original agreement, because the provisions were either incomplete or didn't work. The business community is supportive of this bill and she called attention to written testimony of Marlee Carpenter, KS Chamber of Commerce, and John T. Frederick, The Boeing Company (Attachment 2).

A memorandum was distributed (Attachment 3). Secretary Wagon and Richard Cram, KDOR, reviewed the changes in the bill explaining the current law and the new language. New provisions replaced language under the following groups: Exemption Administration; Liability Relief for CSP's, Sellers and Purchasers; Rates and Boundaries Database; Bundled Transactions; Durable Medical Equipment Definition; Multiple Points of Use; and Direct Mail Delivery Charges. She concluded by saying there were several problems with the original draft of SST, however this bill fixes those areas of concern.

Mark Beshears, Sprint, appeared in support of the amendments that were outlined by Secretary Wagon. He explained the changes regarding *uniform definitions* and *consistent database* in the Telecommunications Services portion of the bill. He recommended the following changes as outlined in the balloon for **HB 2590** (Attachment 4).

Discussion followed regarding: History of SST; Sovereignty issues; Future benefits of SST; and Voting process at SST Business meetings.

The Chairman closed the public hearing.

Representative Owens made the motion that the balloon amendments, presented by Mark Beshears, be amended into **HB 2590**. Representative Menghini seconded the motion. Two technical amendments were suggested by Gordon Self, Office of the Revisor. On page 56, in line 32, by striking "or" the first time it appears and inserting "one", and page 8, line 6, by striking "as". Those technical amendments were accepted as part of Representative Owens motion, and Representation Menghini agreed. The motion carried.

Representative Owens made the motion that the Committee pass out **HB 2590**, as amended, favorable for passage. Representative Holland seconded the motion. The motion carried.

The meeting adjourned at 10:20 a.m. The next meeting is March 23, in 313-S.

**Kansas Department of Revenue
Compliance Enforcement Discovery Project**

	Licensee's Processed	All Licensee's Researched	Kansas Licensee's Pursued	Kansas % Noncomp.	Non-KS Resident Letters	Non-KS % Noncomp.	Refunds Paid	TOTAL Discovered	TOTAL In Bank
Behavioral Sciences Board	7,901	1,460	112	1.4%	419	5.3%	\$ 28	\$ 29,650	\$ 22,845
Board of Accountancy	3,296	777	24	0.7%	425	12.9%	\$ 8,419	\$ 79,002	\$ 77,380
Board Of Emergency Services	11,346	2,201	399	3.5%	241	2.1%	\$ 3,330	\$ 23,361	\$ 14,472
Board of Nursing	44,679	11,398	1,615	3.6%	4,883	10.9%	\$ 318,535	\$ 2,156,666	\$ 1,272,116
Board of Optometry Examiners	605	233	2	0.3%	39	6.4%	\$ -	\$ -	\$ -
Insurance Department	74,775	55,786	1,066	1.4%	19,562	26.2%	\$ 77,131	\$ 1,538,330	\$ 950,889
Judicial Branch	3,035	2,096	109	3.6%	1,914	63.1%	\$ 997	\$ 53,330	\$ 33,971
Judicial Council	6,809	1,581	305	4.5%	-	0.0%	\$ 101,546	\$ 991,633	\$ 902,384
KS Bureau Investigation	557	277	8	1.4%	21	3.8%	\$ -	\$ 3,412	\$ 3,412
Kansas Dental Board	3,731	1,031	20	0.5%	539	14.4%	\$ 604	\$ 31,521	\$ 31,538
KDOR - Dealers/Liquor Licensing	9,790	3,488	282	2.9%	-	0.0%	\$ 13,824	\$ 205,689	\$ 81,980
Kansas Securities Commission	5,364	923	241	4.5%	-	0.0%	\$ 86,460	\$ 833,579	\$ 338,793
KS Board of Cosmetology	20,598	5,396	914	4.4%	4	0.0%	\$ 28,320	\$ 185,923	\$ 120,834
KS Board of Mortuary Arts	1,126	312	23	2.0%	120	10.7%	\$ 218	\$ 44,563	\$ 35,395
KS Board of Pharmacy	7,797	2,814	51	0.7%	1,337	17.1%	\$ 6,098	\$ 148,380	\$ 68,554
KS Department of Education	59,796	10,016	294	0.5%	1,392	2.3%	\$ 15,216	\$ 103,574	\$ 94,900
Real Estate Appraisal Board	1,268	507	27	2.1%	77	6.1%	\$ -	\$ 31,249	\$ 18,958

Legislative Testimony

HB 2590

March 22, 2007

**Testimony before the Kansas House Taxation Committee
by Marlee Carpenter, Vice President of Government Affairs**

Chairman Wilk and members of the committee:

I am Marlee Carpenter with the Kansas Chamber. We represent over 10,000 members, small, medium and large businesses from all corners of the state. The Kansas Chamber supports the changes in HB 2590. These changes were requested by the business community at the national level and reflect the provisions needed to keep Kansas in compliance with the Streamlined Sales Tax Project.

While the Kansas Chamber has reservations about destination sourcing provisions enacted in the SSTP, we continue to support the concept of the project and the ability of the national retailers to comply with one, uniform system of enforcement and remittance.

We urge this committee to support HB 2590.



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March 22, 2007

To: The House Taxation Committee
Kenny Wilk, Chairman
Richard Carlson
Tom Holland
Mark R. Treaster
Elaine S. Bowers
Virgil Peck
Jeff King
Gary K. Hayzlett
Jeff Whitham
Lance Kinzer
Arlen H. Siegfried
Gene Rardin
Tim Owens
Julie Menghini
Ron Worley
Anthony R. Brown
Paul T. Davis
Steve Lukert
Don Schroeder
J. David Crum
Raj Goyle
Melody McCray-Miller
Nile Dillmore

Subject: HB 2590

Mr. Chairman and Members of the Committee, my name is John Frederick, Director of State and Local Government Relations for The Boeing Company. Boeing would like to offer its support to House Bill 2590, concerning changes in the Kansas retailer's sales tax act related to exemptions, exemption certificates, liability for errors in collection and jurisdiction and rate database with regard to streamlined sales tax compliance.

Boeing has supported tax simplification generally and has been an advocate for the changes included in the SST Agreement. Most of the requirements in the SST Agreement have been adopted at the request of the business community. Businesses will benefit from the simplification effort only if the SST Member States continue to comply with those requirements. For this reason we urge your favorable consideration of HB 2590 to ensure that Kansas is able to continue its participation in the SST. Boeing appreciates the State of Kansas' commitment to SST and the hard work of Secretary of Revenue Joan Wagon on the SST Governing Board and hopes for her continued participation.

Thank you for your consideration regarding HB 2590.

House Bill 2590 - Statutory Changes Needed to Conform to Recent Amendments to the Streamlined Sales and Use Tax Agreement

Changes made by the Streamlined Sales Tax Governing Board in the Agreement now must be adopted by Member states to retain full member status. The business community worked for these Agreement changes. The statutory changes that Kansas will need to adopt are grouped together below.

Exemption Administration

Effect of these changes: Sellers obtaining exemption certificates from purchasers are afforded greater liability protection and longer to obtain an exemption certificate.

Current Law

New Provisions in H2171

1. Drop shippers had to register

Registration not required

K.S.A. 79-3691 is repealed (Section 13, page 57)--out-of-state retailer who does not have nexus with Kansas need not be registered as a Kansas retailer to claim the resale exemption when dealing with a vendor drop shipping the retailer's product to a Kansas customer.

2. Retailers have 60 days to provide

Change to 90 days/ or 120 days

K.S.A. 79-3609 is amended (Section 4, page 44)—retailers have 90 days from sale date to obtain exemption certificate from purchaser and 120 days from date of KDOR auditor's request for exemption certificates to prove transaction is exempt or to provide exemption certificate from purchaser.

3. Retailers liable

Retailers not liable

K.S.A. 79-3651 is amended (Section 5, pages 46-47)--retailer relieved from liability for failure to collect sales tax when exemption certificate obtained from purchaser, except in limited circumstances. Also, purchaser can use blanket exemption certificate when there is a recurring business relationship between the buyer and seller.

Liability Relief for CSP's, Sellers and Purchasers

Certified Service Providers collect the tax for the retailers. The changes provide greater liability protection for errors in collecting the wrong amounts if they use the state-provided rates and boundaries databases.

Current Law

New Provisions in H2171

1. Purchasers are responsible; No liability if they use state database

New Section 10 (pages 53-54) provides liability relief from tax, penalty and interest to purchasers for failure to pay the correct tax in reliance on erroneous data from the Department on tax rates, taxing jurisdiction boundaries, or in the taxability matrix.

2. CSP's are new – law silent CSP's or sellers using our software
Not liable – new provision

New section 11 (pages 54-55) provides liability relief to a certified service provider (CSP) or model 2 seller for not collecting the correct tax if the secretary has certified the CSP's software program as adequately classifying product-based exemptions, and the CSP, as a certified automated system (CAS), or model 2 seller relied on that certification in making the error. CSP's are also afforded the same liability protection as sellers under the K.S.A. 79-3609 and 79-3651 amendments when taking exemption certificates from their purchasers.

Rates and Boundaries Database

Current Law

1. Current law doesn't reflect changes
From zip to address

New Provisions in H2171

- New changes about databases.
Ours comply with this provision

K.S.A. 79-3668 is amended (Section 7, pages 48-50) to provide that once the Department has developed an address-based system for assigning taxing jurisdictions, CSP's and sellers are required to use that system, instead of the zip code database, which is less accurate. The Department can also certify a vendor-provided database, which a seller or CSP can use in place of the Department's database. Any database that the Department provides must be free of charge.

K.S.A. 79-3667 is amended (Section 6, pages 48-49) so that if the Department provides an address-based system for assigning taxing jurisdictions, CSP's and sellers are not given liability relief for errors resulting in reliance on the five-and nine-digit zip code database. The Secretary can extend liability relief for a designated time period to a seller demonstrating that it would create an undue hardship to rely on the address-based system.

Bundled Transactions

(These changes do not appear in our law now. They are the result of work to satisfy the business community and need to be added to our law.)

A "bundled" transaction involves the sale of two or more products for one non-itemized price and only some items in the "bundle" are taxable. As a general rule when that occurs, the entire transaction is deemed taxable. Only if the taxable and non-taxable portions of the price are broken out or itemized separately, would the tax be limited to the

sale of the taxable items contained in the bundle. The business community worked closely with participating states to develop an acceptable definition for a bundled transaction and rules that narrow the situations when a bundled transaction exists.

New Section 12 (pages 55-56) contains the Agreement definition of “bundled transaction” and provides that only when a transaction fits within that definition will the non-itemized price for the bundle be fully taxable. There is a “typo” on page 56, line 32 of the bill: the first “or” should be “one.”

K.S.A. 79-3602(11) is amended (Section 1(11), pages 7-8) to eliminate a provision in the definition of “sales or selling price” that would otherwise conflict with the “bundled transaction” definition. Also, uniform rules for how various types of discounts and coupons affect the sales price are added to the “sales price” definition.

Durable Medical Equipment Definition

(When the SST definitions changed, some items we currently have exempted would be taxed. This change adopts the new definitions and preserves the exemption for oxygen delivery equipment, kidney dialysis machines and feeding tubes.)

The Department has treated certain prescribed oxygen delivery equipment, kidney dialysis machines, and enteral feeding systems as exempt prosthetic devices. However, the Agreement definition of “prosthetic device” adopted in 2003 imposed a requirement that a “prosthetic device” has to be “worn in or on the body.” These items are not and more properly fit within the Agreement definition of “durable medical equipment,” at K.S.A. 79-3606(hh). The sales tax exemption for “durable medical equipment” is limited to purchases by nonprofit skilled nursing homes or nonprofit intermediate nursing care homes. The Agreement permits states to separately exempt oxygen delivery equipment, kidney dialysis machines, and enteral feeding systems and exclude them from the definition of “durable medical equipment.”

K.S.A. 79-3606(r) (Section 3(r), page 21) and (hh) (Section 3(hh), page 25) are amended to exempt these items, when prescribed, and exclude them from the “durable medical equipment” definition.

Telecommunications Services

Current Law

1. What is taxed remains taxed.

New Provisions in H2171

What is exempt remains exempt.

To obtain uniform terminology in sales tax statutes concerning telecommunications services, the telecommunications industry developed several technical definitions now included in the Agreement. A “telecommunications services” definition is provided for imposing sales tax on telecommunications. “Ancillary services,” excluded from the “telecommunications services” definition, are defined, as

are specific types of “ancillary services” and other technical terms. K.S.A. 79-3602 is amended (Section 1, pages 9-11) to adopt those definitions.

K.S.A. 79-3603(b), (t) and (u) the tax imposition statutes for telecommunications services, are amended (Section 2, pages 11-12, 16) to tax the telecommunications services and ancillary services that Kansas is currently taxing, and exempt those types of services that Kansas is currently exempting, using the new definitions.

The Agreement also contains a special “bundled transactions” rule applicable to telecommunication service, ancillary service, internet access, or audio or video programming service. When the “bundle” includes any one of these services, the portion of the price attributed to the nontaxable products is taxable unless the provider can identify the non-taxable portion of the price from its books and records. The old telecommunications “bundling” rule in K.S.A. 79-3603(b) (requiring the provider and the Department to enter into an agreement containing the provider’s methodology for determining the taxable portion of the non-itemized price, and requiring the provider, upon request, to disclose to the consumer the price of the taxable portion of the services purchased) is deleted (Section 2, page 12) and replaced with new Section 12(c) (page 56).

Sections 8 (page 50) and 9 (pages 50-53) make some technical changes to the telecommunications sourcing statutes, K.S.A. 79-3670 and K.S.A. 79-3673, to conform to the new Agreement telecommunications definitions.

Multiple Points of Use

Current Law

1. MPU sourcing provisions enacted 2003
--complicated and unworkable

New Provisions in H2171

MPU is repealed.

K.S.A. 79-3671, the “multiple points of use” (MPU) sourcing statute, is repealed (Section 13). At the Seattle meeting in December 2006, the Governing Board voted to repeal the MPU provisions in the Agreement, which were intended to provide a way to source purchases of computer software delivered electronically and used at multiple locations in different states. Both the states and business community have struggled, unsuccessfully thus far, to come up with a way to satisfactorily implement this sourcing provision. Efforts will continue toward reaching consensus on dealing with this issue, but in the meantime, the MPU provisions are out of the Agreement.

Direct Mail Delivery Charges

Current Law

1. Postage is included in delivery charges

New Provisions in H2171

EXEMPT

The Agreement gives Member States the flexibility to exclude from the definition of “delivery charges” postage on direct mail (defined at K.S.A. 79-3602(j)). This change is made to the definition of “delivery charges” at K.S.A. 79-3602(i) (Section 1(i), page 2), so sales tax would not apply to postage on direct mail.

Amendment *By Beshears*

HB 2590

11

1 nates or terminates in the United States and terminates or originates out-
2 side the United States, respectively. United States includes the District of
3 Columbia or a U.S. territory or possession.

4 (fff) "Interstate" means a telecommunications service that originates
5 in one United States state, or a United States territory or possession, and
6 terminates in a different United States state or a United States territory
7 or possession.

8 (ggg) "Intrastate" means a telecommunications service that originates
9 in one United States state or a United States territory or possession, and
10 terminates in the same United States state or a United States territory or
11 possession.

12 Sec. 2. K.S.A. 2006 Supp. 79-3603 is hereby amended to read as
13 follows: 79-3603. For the privilege of engaging in the business of selling
14 tangible personal property at retail in this state or rendering or furnishing
15 any of the services taxable under this act, there is hereby levied and there
16 shall be collected and paid a tax at the rate of 5.3%. Within a redevel-
17 opment district established pursuant to K.S.A. 74-8921, and amendments
18 thereto, there is hereby levied and there shall be collected and paid an
19 additional tax at the rate of 2% until the earlier of the date the bonds
20 issued to finance or refinance the redevelopment project have been paid
21 in full or the final scheduled maturity of the first series of bonds issued
22 to finance any part of the project upon:

23 (a) The gross receipts received from the sale of tangible personal
24 property at retail within this state;

25 (b) ~~(1) the gross receipts from intrastate telephone or telegraph serv-~~
26 ~~ices, (2) the gross receipts received from the sale of interstate telephone~~
27 ~~or telegraph services, which (A) originate within this state and terminate~~
28 ~~outside the state and are billed to a customer's telephone number or~~
29 ~~account in this state, or (B) originate outside this state and terminate~~
30 ~~within this state and are billed to a customer's telephone number or ac-~~
31 ~~count in this state, interstate or international communications, and any~~

32 ~~ancillary sources sourced to this state in accordance with K.S.A. 2006~~
33 ~~Supp. 79-3673, and amendments thereto, except that the sale of interstate~~
34 ~~telephone or telegraph telecommunications service does not include: (A)~~

35 ~~(1) Any interstate incoming or outgoing wide area telephone service or~~
36 ~~wide area transmission type service which entitles the subscriber to make~~
37 ~~or receive an unlimited number of communications to or from persons~~
38 ~~having telephone service in a specified area which is outside the state in~~
39 ~~which the station provided this service is located or international 800 or~~

40 ~~900 service; (B) (2) any interstate or international private communications~~
41 ~~service to the persons contracting for the receipt of that service that en-~~
42 ~~titles the purchaser to exclusive or priority use of a communications chan-~~
43 ~~nel or group of channels between exchanges as defined in K.S.A. 2006~~

services

tele

services