

## MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:37 A.M. on March 6, 2008 in Room 519-S of the Capitol.

All members were present except:  
Anthony Hensley- excused

Committee staff present:  
Gordon Self, Office of Revisor of Statutes  
Chris Courtwright, Kansas Legislative Research Department  
Scott Wells, Office of Revisor of Statutes  
Ryan Hoffman, Kansas Legislative Research Department  
Judy Swanson, Committee Assistant

Conferees appearing before the committee:  
Representative Kenny Wilk  
Robert Vancrum, Greater Kansas City Chamber of Commerce  
Rob Cole, Tax Research Manager, Sprint/Nextel  
Marlee Carpenter, Kansas Chamber (Written only)  
John Cmelak, Vice President, State Tax Policy, Verizon Communications (Written only)

Others attending:  
See attached list.

Hearing on **HB 2641--Nondeduction of property taxes paid by certain nonresident taxpayers subject to Kansas income tax liability** was opened.

Chris Courtwright, Kansas Legislative Research Department, reviewed the bill and gave the background history of its introduction.

Representative Kenny Wilk explained the bill and why it may or may not be necessary. (He will provide written testimony at a later date.) **HB 2641** is known as the Reciprocity Act. Missouri had an issue with the State of Illinois on the deductibility of property taxes paid in other states, and thus enacted a law that prevents a state income tax deduction relative to property taxes paid in other states, including Kansas.

There is a trigger in the bill to make it retroactive to 2007, and Representative Wilk feels it is important to leave this provision in the bill. He attempted to get Missouri to suspend its act, but Missouri refused to do so. There is currently a bill in the Missouri Legislature that if enacted would negate the need for **HB 2641**. Missouri legislation will, however, likely not be acted on until after the Kansas Legislature adjourns. Rep. Wilk urged the passage of **HB 2641** in the unlikely event Missouri does not pass appropriate legislation.

Robert Vancrum, Greater Kansas City Chamber of Commerce, testified as a proponent to **HB 2641**. (Attachment 1) He said Missouri disallows any nonresident from deducting property taxes paid on property in other states against his/her Missouri income tax because of the long-standing refusal of Illinois to allow Missourians to deduct property taxes against their Illinois nonresident income tax liability. He testified the Missouri Legislature appears to have enough support to enact a reciprocity bill, but if Missouri does not pass the bill, **HB 2641** will be needed.

Richard Cram, Kansas Department of Revenue (KDOR), said the administrative costs of **HB 2641** would be \$141,000. In response to Senator Schmidt, Mr. Cram said the annual loss of \$5 million was built into the November consensus revenue estimates.

The hearing was closed.

The hearing on **SB 664--Sales tax refund on certain purchases of telecommunications machinery and equipment** was opened.

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:37 A.M. on March 6, 2008 in Room 519-S of the Capitol.

Ryan Hoffman, KLRD, reviewed **SB 664**, which would provide a state sales tax exemption for the sales of certain telecommunications equipment and machinery.

Rob Cole, Tax Research Manager of Sprint/Nextel, testified as a proponent for **SB 664**. (Attachment 2) He testified on behalf of a coalition which includes Sprint/Nextel, Embarq, AT&T, Verizon Wireless, T-Mobile, Alltel, Cox Cable, Kansas Cable Telecommunications Association, U.S. Cellular, Rural Telephone Service Company, Inc., Nex-Tech, Inc., Nex-Tech Wireless, LLC, WestLink Communications, LLC and High Plains Telecommunications, Inc. According to Mr. Cole, the elimination of this tax on investment in telecommunications network assets would have significant benefits for Kansas businesses. Telecommunications is one of the few industries in Kansas which does not enjoy a sales tax exemption for the purchase of equipment used in production operations. There are a total of 23 states plus the District of Columbia which do not tax the purchase of telecommunications equipment.

Mr. Cole said a refund mechanism would be established for all purchases of telecommunications machinery and equipment, and only the state tax would be subject to the refund provision. The industry has worked with KDOR to ensure the language of the exemption is precise so items included in the exemption are clearly enumerated.

Senator Lee asked what services would not be provided in Kansas if this exemption was not granted. Mr. Cole responded there is competition nationwide for telecommunication dollars. It will make it easier for the dollars to be spent in Kansas if the bill is enacted. Senator Lee expressed disappointment that passage of **SB 664** would not result in lower customer rates.

In response to Senator Pine, Mr. Cole said of the four states surrounding Kansas, only Missouri has enacted such legislation. Oklahoma will have a hearing next week on a bill, and Nebraska and Colorado are not considering it at this time. In response to Senator Schmidt, Mr. Cole will provide information on how many surrounding states have legislation similar to the M&E legislation which was enacted in Kansas last year that included telecommunication companies.

Written testimony in support of **SB 664** was received from Marlee Carpenter, Kansas Chamber, (Attachment 3) and John Cmelak, V-President, State Tax Policy (Attachment 4).

The hearing was closed.

Senator Schmidt moved to approve the Minutes of the February 25 and February 26 Committee meetings. Senator Jordan seconded the motion, and the motion passed.

Being no further business, the meeting adjourned at 11:18 a.m. The next meeting will be March 12.



TESTIMONY .TO THE SENATE ASSESSMENT AND TAXATION COMMITTEE  
IN SUPPORT OF HB 2641

Robert Vancrum, Kansas Government Affairs Specialist of the Greater Kansas City  
Chamber of Commerce

March 6, 2008

The Greater Kansas City Chamber of Commerce, representing thousands of business members in both Kansas and Missouri, is of course deeply concerned about the interaction of interstate commerce and tax laws in the Greater Kansas City Area. Last year, as those of you that served on this summer's interim are aware, the Missouri legislature, apparently driven by the longstanding refusal of Illinois to allow Missouri residents to deduct property taxes against their Illinois nonresident liability, passed legislation prohibiting ANY NONRESIDENT FROM DEDUCTING PROPERTY TAXES PAID ON PROPERTY IN OTHER STATES AGAINST THEIR MISSOURI TAX.

Our Chamber, at the request of your Chairman and Chairman Wilk, and with the assistance of the Revenue Secretaries in both states, the Governor's office in both states and with your staff's help in researching and drafting, has helped facilitate a solution, which is that both Missouri and Kansas adopt a position of reciprocity going forward. That is, Kansas will allow the deduction to nonresidents only if the state of their residence would allow it to Kansas residents filing nonresident tax returns in those states.

I'm happy to report that the similar bill has passed the Missouri House, appears to have enough support to pass the Senate ( though of course you can never guarantee those things in any legislature) and the Governor of Missouri has promised to sign when it reaches his desk. The bill doesn't put Kansas further at risk if it is passed here and Missouri for some reason doesn't -- in fact, you will start collecting additional tax from Missouri nonresidents .

We encourage prompt passage of this bill.

**MEMORANDUM**

TO: The Honorable Barbara Allen, Chairperson  
Senate Committee on Assessment and Taxation

FROM: Rob Cole  
Tax Research Manager  
Sprint/Nextel

DATE: March 5, 2008

RE: Senate Bill No. 664

Thank you for the opportunity to appear in support of S.B. 664. I am appearing on behalf of Sprint/Nextel, Embarq, AT&T, Verizon Wireless, T-Mobile, Alltel, Cox Cable, Kansas Cable Telecommunications Association, U.S. Cellular, Rural Telephone Service Company, Inc., Nex-Tech, Inc., Nex-Tech Wireless, LLC, WestLink Communications, LLC and High Plains Telecommunications, Inc. The bill creates the right to a refund for sales tax paid on telecommunication machinery and equipment purchased on and after July 1, 2008. The State of Kansas has made significant strides in the past few years in creating a more favorable tax environment for businesses which has had the effect of stabilizing the job market and increasing tax receipts. Unfortunately, Kansas still imposes a sales tax on telecommunication companies that purchase equipment to expand and upgrade the state's telecommunication networks. Telecommunication providers are one of the few business taxpayers that pay sales tax on the acquisition of machinery and equipment. Superior telecommunications networks improve business productivity and remains a high priority for the local economic development officials. A report in the January, 2008 issue of *Governing* magazine found that excessive taxes on wireless and other telecommunication services may actually be harming economic development efforts by discouraging necessary network investment. The elimination of this tax on investment in telecommunications network assets would have significant benefits for Kansas businesses and constitutes sound tax policy:

- It is estimated that \$12 million in new network investment will occur in the first year following enactment.
- Additional jobs will be created including positions that go beyond those directly related to the installation of such network equipment.

- Telecommunications is one of the few industries in Kansas without a sales tax exemption for the purchase of equipment used in production operations.
- Tax experts universally agree that the sales tax should be on the final consumption of a product, not on the input used to produce the product, in order to prevent the pyramiding of tax. This is the same rationale for not taxing the purchases of machinery and equipment acquired by manufacturers in the state.
- More states are moving toward the elimination of sales tax on telecommunication equipment. Since 2004, Iowa, Utah and Pennsylvania have eliminated such taxes. In addition, the Missouri Supreme Court has determined that such equipment is exempt as manufacturing machinery and equipment under the Missouri statute addressing such purchases. Also, Oklahoma and Puerto Rico are currently considering a telecommunications equipment exemption.
- There are a total of 23 states plus the District of Columbia that do not tax the purchase of telecommunications equipment.

The telecommunication industry has invested more than \$36 billion in telecommunication networks nationwide since 2006. This investment includes the installation of fiber optic cable which allows a significant increase in network speeds. In addition, wireless providers are expected to invest an additional \$20 billion to provide better coverage in rural areas and to upgrade existing coverage to provide seamless high speed internet access and other new services.

S.B. No. 664 has the following features as currently drafted:

- A refund mechanism is established for all purchases of telecommunications machinery and equipment occurring on and after July 1, 2008.
- Only the state tax (currently 5.3%) would be subject to the refund provision.
- Any refund claim would be subject to a one year statute of limitations. No interest would be paid by the state on any refund claim.
- Under the Streamline Sales Tax System (SST), sales tax exemptions are required to be uniform for state and local sales tax purposes. Since the relief sought by this legislation applies only to the state imposition, a refund mechanism must be utilized as opposed to an exemption for any qualifying purchases so as not to impact the SSTP.
- The industry has worked with the Department of Revenue to ensure that the language of the exemption is precise to ensure that the items included in the exemption are clearly enumerated.

In order to minimize the initial fiscal impact, the industry would be amenable to a four year phase-in of the refund provision. The attached balloon includes the phase in language.

Thank you for the opportunity to appear in support of the bill. On behalf of Sprint/Nextel and the telecommunication industry, I encourage the Legislature to take this necessary step to further enhance the telecommunication networks within the State of Kansas.

H-2

Section of 2007

HOUSE BILL No. 2288

By Committee on Taxation

1-30

9 AN ACT concerning sales taxation; relating to refunds; certain purchases,  
10 of telecommunications machinery and equipment.  
11

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

13 Section 1. (a) ~~On and after July 1, 2007, all sales tax paid on the sale~~  
14 ~~of telecommunications machinery and equipment pursuant to K.S.A. 79-~~  
15 ~~6603, and amendments thereto, by a person providing services taxable~~  
16 ~~pursuant to the provisions of subsection (b) of K.S.A. 79-6603, and~~  
17 ~~amendments thereto, shall be refunded as provided in this section. Any~~  
18 ~~claim for refund shall be submitted within the time period prescribed by~~  
19 ~~K.S.A. 79-6603, and amendments thereto. Each claim for a sales tax re-~~  
20 ~~fund shall be verified and submitted to the director of taxation upon forms~~  
21 ~~furnished by the director and shall be accompanied by any additional~~  
22 ~~documentation required by the director. The director shall review each~~  
23 ~~claim and shall refund the amount of sales tax paid as determined under~~  
24 ~~the provisions of this section. All refunds shall be paid from the sales tax~~  
25 ~~refund fund upon warrants of the director of accounts and reports pur-~~  
26 ~~suant to vouchers approved by the director or the director's designee.~~  
27 ~~The secretary of revenue is hereby authorized to adopt rules and regu-~~  
28 ~~lations to administer the provisions of this section.~~

29 (b) For purposes of this section, "telecommunications machinery and  
30 equipment" means machinery, equipment and software that is used for  
31 the purpose of sending, receiving or storing voice or data communications  
32 and all equipment that is used to enable, facilitate, maintain or monitor  
33 such machinery, equipment and software. "Telecommunications machin-  
34 ery and equipment" includes, but is not limited to: Antennas, towers,  
35 amplifiers, poles, wires, cables, rectifiers, duplexers, multiplexers, receiv-  
36 ers, repeaters, transmitters, power equipment, modems, routers, storage  
37 devices and general central office switching equipment such as circuit  
38 switches, analog electronic switches, digital electronic switches and  
39 switches for operator assistance.

40 Sec. 2. This act shall take effect and be in force from and after its  
41 publication in the statute book.

(1) Sales tax paid pursuant to K.S.A. 79-3603, and amendments thereto, on the sale of telecommunications machinery and equipment by a person providing services taxable pursuant to subsection (b) of K.S.A. 79-3603, and amendments thereto, shall be refunded as follows:

(A) one-quarter of said tax paid by such person on the sale of telecommunications machinery and equipment during the period July 1, 2008 through June 30, 2009 shall be refunded;

(B) one-half of said tax paid by such person on the sale of telecommunications machinery and equipment during the period July 1, 2009 through June 30, 2010 shall be refunded;

(C) three-quarters of said tax paid by such person on the sale of telecommunications machinery and equipment during the period July 1, 2010 through June 30, 2011 shall be refunded; and

(D) all of said tax paid by such person on the sale of telecommunications machinery and equipment on and after July 1, 2011 shall be refunded.

(2)

one year from the date of payment of the tax.

No interest shall be paid on refunds granted under this section. In no event shall any city or county sales tax paid on the sale of telecommunications machinery and equipment be refunded under this section.

directly and predominantly

network

network

fiber optic cable

triplexers,

, closures, conduits, controllers, filters, input devices, insulators, microwave equipment, output devices, pedestals, power converters, radio channels, terminals, timing units, transformers, bridges, network computers, cross connects, plug in circuitry, oscillators, network software, servers, power transport equipment, test equipment, connectors, attenuators,





## Legislative Testimony

SB 664

March 6, 2008

### Testimony before the Senate Assessment and Taxation Committee By Marlee Carpenter, Vice President of Government Affairs

Chairman Allen and members of the Committee:

The Kansas Chamber supports equitable tax treatment for all Kansas companies. The Kansas Chamber supports SB 664, a refund of retailers' sales tax on certain purchases of telecommunications machinery and equipment will only increase our competitiveness advantage throughout the region.

A state's business climate is key when businesses make decision on where to locate, expand and create jobs. Moving towards a more competitive environment for the telecommunications industry will help retain key jobs and make Kansas a more attractive place to do business. The telecommunications industry is a key business sector, making capital investments and creating jobs in the state.

SB 664 and equitable treatment for all businesses is critical especially when looking at Kansas' business climate. The Kansas Chamber's 2007 CEO and Business Owners Poll makes the point of how important taxes are to Kansas businesses. The CEO and Business Owners poll is a scientific survey of 300 businesses from all parts of the state. The Chamber annually conducts this survey to gauge the mood of Kansas businesses. This year's poll ranks lower business taxes as the most important issue to the profitability of a business. This is significant because for the first time in four years lower taxes has eclipsed health care costs. In addition, sixty-seven percent of business owners believe that they pay too much in taxes. These two indicators are significant because despite the progress we have made in the last couple of years in the area of business taxes, more needs to be done to improve the business climate in the state. I have attached this polling information to my testimony.

The Kansas Chamber is supportive of equitable tax treatment for all companies and encourages SB 664 be passed.

*Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium and large employers all across Kansas.*





TESTIMONY OF JOHN CMELAK  
VICE PRESIDENT – STATE TAX POLICY

The Honorable Barbara Allen, Chairperson  
Senate Committee of Assessment and Taxation

Sales Tax Exemption on Telecommunications Equipment, SB664  
Thursday, March 6, 2008

Thank you for the opportunity to support the testimony of Sprint Corporation. Verizon Communications and Verizon Wireless (“Verizon”) respectfully offer the following additional comments in support of SB 664.

The telecomm industry respectfully requests that the Kansas legislature extend its existing sales tax exemption to include the purchase of equipment used in the business of providing telecommunications services to Kansans. Local exchange carriers, inter-exchange carriers, and wireless providers universally view this 2008 legislative objective as very important. It’s a responsible goal that this legislature can achieve this session; one that would place Kansas in a strong competitive position to attract new investment and create new jobs.

Economists and policymakers have long recognized that consumption taxes should be imposed at final sale. Imposing taxes at final consumption allows companies to choose the most economically efficient mix of capital and labor to produce goods as inexpensively as possible. Taxes on inputs distort these investment decisions. They result in “pyramiding” or “cascading” of taxes – the imposition of a tax on a tax. Pyramiding occurs when taxes paid for machinery, equipment, and other inputs to production are then added to the price of a good, which is then taxed at final sale. The good news is that we are not breaking any new ground here -- Kansas policymakers have already endorsed this important tax policy principle by providing the manufacturing sector with a sales tax equipment exemption. We are merely requesting that the legislature promote parity in taxation by treating the fiercely competitive telecommunications industry on a footing equal to the manufacturing industry.

There are compelling economic reasons why a telecommunications equipment exemption is a key ingredient to Kansas’ future economic development and prosperity. I urge each respected member of this committee to ask yourself the question: “Is Kansas doing all that it should to attract new and speedier telecommunications technologies?”

As a Vice President for the nation’s second largest wireless telecommunications service provider, I can offer this committee my own perspective. The hard economic reality is that telecommunications service providers no longer can tap a virtually unlimited supply of investment capital to upgrade our networks within each venue. Investors remain nervous. The rapid slowdown in our economy in the early 2000’s and the resulting deterioration in capital markets have forced companies such as Verizon to carefully scrutinize each capital investment decision to generate maximum return. And although it would be disingenuous to suggest that all capital investment decisions are driven exclusively by state tax policy, it is absolutely accurate to state that the increased cost of Kansas’s state and local sales tax is factored into the “rate of return” computations that companies use to determine where to make new capital investment.

Once again, the telecomm industry speaks with a common voice, and our message remains consistent: we respectfully request that the Kansas legislature extend its current sales tax exemption to include the purchase of equipment used in the business of providing telecommunications services to Kansans. Your support will send a strong signal to senior management of Verizon and its telecommunications competitors that Kansas not only recognizes the value of tax parity, but that it has also taken affirmative steps to modernize its tax code to foster the continued deployment of 21<sup>st</sup> century, high-speed telecommunications infrastructure.

Thank you for your consideration.

Assessment & Taxation  
Date 3-8-08  
Attachment # 4