Approved: February 17, 2009
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:00 a.m. on February 9, 2009, in Room 535-N of the Capitol.

All members were present except Representative Siegfreid who was excused.

Committee staff present:
- Gordon Self, Office of the Revisor of Statutes
- Scott Wells, Office of the Revisor of Statutes
- Hank Avila, Kansas Legislative Research Department
- Chris Courtwright, Kansas Legislative Research Department
- Kathy Beavers, Committee Assistant

Conferees appearing before the committee:
- Don McNeely, President of Kansas Automobile Association
- Jeff Longbine, Longbine Chevrolet Dealership
- John Frederico, General Motors
- Representative Mario Goico
- Richard Cram, Kansas Department of Revenue

Others attending:
- See attached list.

Bill Introductions:
Representative Holmes requested a bill introduction that would permit deployed National Guardsmen to claim property tax exemptions while they are deployed. A motion was made by Representative Menghini to accept the bill introduction. Representative Frownfelter seconded the motion. The motion carried.

HB 2172 - Permanent exclusion from sales taxation of certain cash rebates on sales or leases of new motor vehicles.

The Chairman opened the hearing on **HB 2172.**

Chris Courtwright, Kansas Legislative Research Department, briefed the committee on **HB 2172**. The fiscal note on this bill would be $3.2 million in FY 2010. The passage of this bill will remove the sunset clause which is due to expire June 30, 2009. He stood for questions.

Don McNeely, President of Kansas Automobile Association, testified in support of **HB 2172** (Attachment 1). The surrounding states of Missouri, Nebraska and Oklahoma exempt sales tax on automobile manufacturer rebates.

Jeff Longbine, Longbine Chevrolet Dealership, testified in favor of **HB 2172** (Attachment 2). Mr. Longbine is a 4th generation auto dealership owner in Emporia. He stated that if the sunset is removed it would raise the cost of automobiles to Kansas consumers and would also be a disincentive to consumer spending.

John Frederico, General Motors, testified in favor of **HB 2172** (Attachment 3). He stated that the automobile industry is struggling. One such facility is in Fairfax, Kansas and due to the struggling economy, has been idle for two months. Mr. Frederico stated that this bill would help permanently correct what appears to be an unfair tax treatment of manufacturer rebates.

Richard Cram, Kansas Department of Revenue, testified in opposition to **HB 2172** (Attachment 4). Mr. Cram discussed the fiscal impact to the state of Kansas in FY 2010 through FY 2012. Kansas can no longer afford the exclusion in the current economic environment. He stood for questions.

The Chairman closed the hearing on **HB 2172**.

HB 2174 - Exclusion of certain social security benefits from Kansas adjusted gross income for income tax purposes for married couples filing a joint return or separate returns.

Minutes of the House Taxation Committee at 9:00 a.m. on February 9, 2009, in Room 535-N of the Capitol.

The Chairman opened the hearing on **HB 2174**.

Chris Courtwright, Kansas Legislative Research Department, briefed the committee on **HB 2174**. He stood for questions.

Representative Goico testified in favor of **HB 2174**. He stated Kansas is the only state that taxes social security benefits and he feels that the current bill unfairly taxes married couples. He stood for questions.

Richard Cram, Kansas Department of Revenue, testified in opposition to **HB 2174** (Attachment 5). He explained the proposed changes if **HB 2174** is adopted. Mr. Cram stated that the Department is concerned with this bill's negative fiscal impact and permanent decrease to the Kansas tax base. This will affect the State's ability to meet the basic needs of its citizens.

Representative Goico requested an amendment to **HB 2174** to exclude certain social security benefits from Kansas adjusted gross income for income tax purposes for married couples filing a joint return.

Representative Carlson closed the hearing on **HB 2174**.

Representative Goyle made a motion to introduce a bill concerning a sales tax exemption for Kansas Legal Services, Incorporated. Representative Goico seconded the motion. The motion carried.

Chairman Carlson stated that **HB 2079** and **HB 2172** will be worked at the Thursday, February 12, 2009 meeting.

The meeting was adjourned at 10:10 a.m. The next meeting is scheduled for February 10, 2009.

HOUSE TAXATION COMMITTEE

SIGN IN SHEET

DATE: February 9, 2009

Terry Heidner	KDOT
Matt Casey	GBA
Jeff Longbine	KADA
Don McNeely	~~KADA~~
Dave Holtwick	O.P. Chamber
Whitney Damron	KS Auto Dealers Assn
Michelle Butler	Capitol Strategies

Serving The Kansas Automobile & Truck Dealers Since 1932

KANSAS AUTOMOBILE DEALERS ASSOCIATION

February 9, 2009

To: The Honorable Richard Carlson, Chairman
and Members of the House Committee on Taxation

From: Don L. McNeely, KADA President

Re: HB 2172 – Relating to Sales of New Motor Vehicles; Taxation of Rebates

Good morning, Chairman Carlson and Members of the House Committee on Taxation. My name is Don McNeely and I am the President of the Kansas Automobile Dealers Association, which represents the retail new franchised motor vehicle industry in Kansas. I am also joined this morning by KADA's Legislative Chairman Jeff Longbine of Emporia and our Legislative Counsel Whitney Damron.

On behalf of KADA, I am pleased to appear today in support of HB 2172, which would remove the sunset of June 30, 2009 for the sales tax exemption associated with motor vehicle manufacturer rebates from the taxable selling price or lease amount of a new motor vehicle.

As some members of the committee will remember, the sales tax exemption for motor vehicle manufacturer rebates was enacted during the 2006 Legislative Session. The original bill that session, HB 2640 passed the House of Representatives and the legislation eventually became part of SB 404, where the sunset provision of June 30, 2009 was added in Conference Committee.

While this issue is not new to some members of the Committee, it is extremely important to the retail motor vehicle industry and the consumers of Kansas. Since the enactment of the sales tax exemption, the sometimes-heated debate with consumers about the taxability of a manufacturer rebate has ceased. This had become commonplace prior to the enactment of the sales tax exemption, especially along the state-line, due to the fact that Missouri, Oklahoma and Nebraska had previously exempted manufacturer rebates from the taxable selling price or lease amount of a new motor vehicle.

Since 2006, the manufacturers had made a concerted effort to move away from rebate incentives and concentrate on incentive financing. However, due to the historic down-turn in our industry some manufacturers have again turned to rebate incentives to move inventory despite plant closings across the country.

House Taxation Committee
2-9-09
Attachment 1

Currently Congress and some states are looking at ways to stimulate sales of motor vehicles, as the retail automobile industry is such an essential and important element of our nation's economy. Last week, our industry was successful in amending the stimulus bill in the U.S. Senate by adding language that would allow a federal income tax deduction for sales and excise tax paid on a purchase of a new vehicle, as well as an above the line income tax deduction for the interest expense associated with the purchase of a new vehicle. In addition, a "cash for clunkers" amendment was also considered by the U.S. Senate that would have given $10,000 to any moderate or low income consumer who trades in a car or truck that is at least 10 years old and buys a new one that is more fuel-efficient and "assembled in the United States." The trade-ins would then be scrapped rather than resold. Needless to say, this stimulus idea was met with considerable resistance by the import manufacturers and the import dealers, as they wanted to see it expanded to all vehicles sold in the United States.

While we are currently awaiting Kansas specific sales figures, after nine straight years of at least 16 million U.S. sales, light vehicle sales in 2008 fell 18 percent to 13.2 million units, a decline of almost 3 million light-duty cars and trucks. Second half 2008 sales fell 26.2 percent, fourth quarter plummeted 34.7 percent and January 2009 sales were off 37 percent from a year ago. While our state may currently be weathering the recession better than others, it is doubtful our numbers will vary more than a couple of percentage points from the national sales figures.

Currently, the franchised new car dealers of Kansas generate $5.7 billion in annual sales and are responsible for approximately 17.3 cents of every dollar of sales tax collected in our state. We are a critical and essential part of our state's economy and it is extremely important that the State of Kansas have a healthy and viable retail motor vehicle industry. Sales of new and used cars, as well as parts and service, are one of the single largest source of sales tax revenue for our state and the majority of our city and county governments.

While the KADA membership understands the dire fiscal challenges the State of Kansas is facing, we are also facing devastating consequences in our industry as well, and many Kansas dealerships survival is at stake. This is the wrong time to increase taxes on a purchase of a new vehicle, which is exactly what this would be, if the sales exemption on manufacturer rebates is allowed to sun-set.

On behalf of the Kansas Automobile Dealers Association, I thank the Members of the Committee for allowing me to appear before you this morning in support of HB 2172.

Longbine AUTOPLAZA

CHEVROLET PONTIAC BUICK

February 9, 2009

To: The Honorable Richard Carlson, Chair
And Members of the House Committee on Taxation

Good morning Mr. Chairman and members of the Committee. My Name is Jeff Longbine and I'm a 4th generation General Motors Dealer located in Emporia.

I'm pleased and honored to be able to testify before you this morning on this very important piece of legislation. I respect the committee's time and will attempt to be brief.

The taxation of retail rebates in the automobile industry is a complicated issue. The manufacturers have fallen into the trap of offering constant incentives to purchase new vehicles. As this process has evolved the manufacturers have simply built this into the cost structure of the vehicle. The industry now uses the term of transaction price for all their measurements. This term describes the selling price less incentives. I bring this to the committee's attention because the transaction price is truly the cost to the consumer and therefore should also be the taxable price.

Prior to the current law taking affect there was a lot of confusion and unhappiness with consumers. The typical auto transaction is presented to the consumer based on the transaction price and then the consumers were taxed at higher price. I'm sure that you understand the problems this can cause on rebates that can and do equal amounts in excess of $5000.00.

The auto dealers in Kansas are responsible for and collect taxes on almost 1/5 of all retail transactions. I'm sure that all the committee members understand the difficulties that our industry currently has because of the current recession. Removing this sunset will raise the cost and payments of Kansas consumers there by eliminating more consumers. I feel that this is the time encourage spending and not allowing legislation that would act as a disincentive to spending.

I urge the committee to strongly consider passage of HB2172 as a matter of simplicity, fairness, and a tool to spur the Kansas economy to move forward.

I stand available for questions.

House Taxation Committee
2-9-09
Attachment 2

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Testimony In Support of HB 2172

John J. Federico, JD

Offered on Behalf of General Motors

February 9, 2009

House Taxation Committee

Chairman Carlson, and members of the House Taxation Committee, I appear before you today on behalf of General Motors to offer my unqualified support of HB 2172.

There are many reasons to support this legislation, none more important than that it provides the opportunity to help Kansas consumers, but also help two different industries, one a struggling manufacturer and the other, an association representing hundreds of small businesses across the state. The two entities do however share a common trait, in that they both contribute in very significant ways to the Kansas economy.

Due in large part to the improving tax climate in Kansas, General Motors has made considerable investments in the Fairfax, KS facility and currently produce some of GM's most desirable vehicles. In spite of the Fairfax plant's good fortune, the crumbling national economy and the tight credit market has taken its toll. Kansas' only automobile manufacturing facility, and one of Kansas' flagship employers, has been idle for close to two months.

Support of HB 2172 not only provides critical support to important contributors to the Kansas economy but also takes an important step to permanently correcting what appears to be an unfair tax treatment of manufacturer rebates.

I urge your support of HB 2172 and appreciate the opportunity to provide brief testimony in support of the bill. I am happy to respond to questions.

House Taxation Committee
2-9-09
Attachment 3

KANSAS
DEPARTMENT OF REVENUE

Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

Testimony to the House Taxation Committee

Richard Cram

February 9, 2009

Department Concerns with House Bill 2172

Representative Carlson, Chair, and Members of the Committee:

House Bill 2172 would amend the definition of "sales or selling price" in K.S.A 79-3602 to make permanent the exclusion of cash rebates granted by a manufacturer to a purchaser or lessee of a new motor vehicle if paid directly to a retailer from the sales or selling price. In the 2006 legislative session, the exclusion of cash rebates from sales or selling price was added but limited to the period July 1, 2006 through June 30, 2009. This proposal strikes those dates so the exclusion becomes permanent, effective July 1, 2009. The proposal has a negative fiscal impact of $3.2 million in FY 2010, $5.3 million in FY 2011, and $10 million in FY 2012, as new vehicle sales and leases are expected to recover over time, beginning in the later half of 2009. Our fiscal note is attached.

The 2006 Legislature had the wisdom to include a sunset provision, so that when this exclusion expires, if the State cannot afford to continue it, no further legislative action is necessary to preserve the tax base. The Department submits that the State can no longer afford this exclusion in the current economic environment.

The Department is concerned with this bill's negative fiscal impact and permanent decrease to the tax base, which will affect the State's ability to meet the basic needs of its citizens. Tax cuts in the range of $143 million through FY 2009 have been enacted in the past four sessions, and if those tax cuts are cumulated through FY 2013, the number is over $1 billion. The question that needs to be asked is not whether a particular tax cut proposal is a good idea, but whether the State can afford to do any tax cutting in the right now.

OFFICE OF THE SECRETARY
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MEMORANDUM

To: Mr. Duane Goossen, Director
Division of Budget

From: Kansas Department of Revenue

Date: 02/06/2009

Subject: House Bill 2172
Introduced as a House Bill

Brief of Bill

House Bill 2172, as Introduced, would amend the definition of sales or selling price in K.S.A 79-3602 of the retailers' sales tax act. The proposal would make permanent the exclusion of cash rebates granted by a manufacturer to a purchaser or lessee of a new motor vehicle if paid directly to a retailer from the sales or selling price. In the 2006 legislative session, the exclusion of cash rebates from sales or selling price was added but limited to the period July 1, 2006 through June 30, 2009. This proposal removes the dates making the exclusion permanent.

The Act would be effective July 1, 2009.

Fiscal Impact

The proposal is estimated to result in the loss of $3.2 million in fiscal year 2010. The estimate for vehicle rebates is based on information from auto industry sources and department statistics and takes into account the reduction in sales of vehicles due to the economic downturn. Comparing July through December 2008 with July through December 2007, the number of title applications (all types including new applications, reissue, duplicate, etc) received show a 30% decrease in applications received. During the same periods, the notice of security interest (vehicle liens) requests has remained constant, indicating a steady sale of newer vehicles. The use of manufacturer's rebates will continue to play an important tool in offering price incentives to new vehicle customers with the changes in how credit will be approved. Many consumers may not have availability to them long term 0% loans so the use of rebates as an incentive may increase.

It is estimated there are 115,000 new car purchases in Kansas annually. For fiscal year 2010, the estimate is based on rebates averaging $1,500 with 50% of all new car purchases receiving a rebate and a drop in new vehicle sales to 80,000. For fiscal year 2011 the estimate anticipates vehicle sales make some recovery and by fiscal year 2012 that vehicle sales are back to the pre-downturn levels.

Fiscal

Year	Total	State	Hwy	Local
2010	$3.2	$2.8	$0.4	$0.8
2011	$5.3	$4.6	$0.6	$1.3
2012	$10.00	$8.77	$1.23	$2.50
2013	$10.20	$8.95	$1.25	$2.55
2014	$10.40	$9.12	$1.28	$2.60

Administrative Impact

Sales tax notices and publications would be revised at a cost of $18,800.

Administrative Problems and Comments

None.

Taxpayer/Customer Impact

Would exclude from sales or selling price cash rebates on new motor vehicles.

Legal Impact

Approved By:

Joan Wagnon
Secretary of Revenue

KANSAS
DEPARTMENT OF REVENUE

Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

Testimony to the House Taxation Committee

Richard Cram

February 9, 2009

Department Concerns with House Bill 2174

Representative Carlson, Chair, and Members of the Committee:

House Bill 2174 amends K.S.A. 79-32,117 to allow a subtraction modification for the amount of taxable Social Security benefits included in federal adjusted gross income (FAGI) if a taxpayer's federal adjusted gross income is $75,000 or less, or $150,000 or less for a married couple filing jointly or for a married couple filing separate returns. The changes would be effective for Tax Year 2009 and thereafter.

The 2007 Legislature enacted House Bill 2031, which enabled taxpayers to exclude from Kansas income tax their otherwise taxable Social Security benefits, effective for Tax Year 2007 if the taxpayer's FAGI was $50,000 or less, and effective for Tax Year 2008 and thereafter, if the taxpayer's FAGI was $75,000 or less. The $50,000 or $75,000 FAGI means test to qualify for the Social Security income exclusion must be applied at the return level. For example, for Tax Year 2008, a taxpayer whose filing status is "single" would qualify for the exclusion if the taxpayer's FAGI is $75,000 or less. However, for a married couple filing a joint return, the $75,000 FAGI means test applies to the amount of FAGI stated on the joint return. For a married couple filing separate returns, the $75,000 FAGI means test would apply to each return, so a spouse filing a "married filing separate" return could claim the exclusion if the spouse's FAGI reported on the return was $75,000 or less.

Under Kansas income tax law (K.S.A. 79-32,115(a), attached), a married couple filing a joint return is treated as one taxpayer, so a married couple filing a joint return with over $75,000 of FAGI reported on the joint return will not qualify for the exclusion. Taxpayers are required to use the same filing status on their Kansas income tax returns as they use in filing their federal income tax returns. K.S.A. 79-32,115. A married couple filing a joint return for federal income tax purposes must also file a joint return for Kansas income taxpayers. A married couple cannot file a joint return for federal income tax purposes and then attempt to file separately for Kansas income tax purposes. A married couple filing separate returns for federal income tax purposes must also file separate returns for Kansas income tax purposes.

House Bill 2174 doubles the $75,000 FAGI means test threshold to qualify for the Social Security income exclusion for married couples filing joint returns, and it quadruples this threshold for married couples filing separate returns. A married couple filing a joint return could claim the Social Security income exclusion if their FAGI is $150,000 or less. For a married couple filing separate returns, the $150,000 FAGI means test would be applied to each spouse. The proposal will have a negative fiscal impact of $9.9 million in FY 2010, $10.0 million in FY 2011, and growing further in out years.

House Bill 2174 proposes a regressive change to the Kansas income tax structure. Married taxpayers receiving Social Security retirement benefits along with other substantial income sources will certainly benefit from this proposal, so long as their FAGI is $150,000 or less. Married taxpayers filing separate returns at even higher levels will particularly benefit. For those filing separately, each spouse could have $150,000 or less of FAGI and still claim the exclusion. Single taxpayers will not benefit.

In addition to the regressivity issue this proposal raises, the Department is concerned with this bill's negative fiscal impact and permanent decrease to the tax base, which will affect the State's ability to meet the basic needs of its citizens. Tax cuts in the range of $143 million through FY 2009 have been enacted in the past four sessions, and if those tax cuts are cumulated through FY 2013, the number is over $1 billion. The question that needs to be asked is not whether a particular tax cut proposal is a good idea, but whether the State can afford to do any tax cutting in the right now.

MEMORANDUM

To: Mr. Duane Goossen, Director
Division of Budget

From: Kansas Department of Revenue

Date: 02/03/2009

Subject: House Bill 2174
Introduced as a House Bill

Brief of Bill

House Bill 2174, as introduced, amends K.S.A. 79-32,117 to allow a subtraction modification for the amount of taxable social security benefits included in federal adjusted gross income if a taxpayers federal adjusted gross income is $75,000 or less, or $150,000 or less for a married couple filing jointly or for a married couple filing separate returns.

The effective date of this bill is on publication in the statute book for tax years beginning after December 31, 2008

Fiscal Impact

Passage of this bill would reduce state general fund revenues by $9.9 million in fiscal year 2010 and $10.9 million in fiscal year 2011.

Passage of this bill would allow taxable social security benefits to be excluded from Kansas income taxes if a single or head of household filer has FAGI of $75,000 or less, $150,000 or less for a married couple filing jointly, or a combined FAGI of $300,000 or less for a married couple filing separately.

The department's individual income tax simulation model was used to estimate the impact of excluding taxable social security benefits from Kansas adjusted gross income. In tax year 2009, taxpayers with an FAGI of $75,000 or less can subtract their taxable social security benefits for Kansas tax purposes, married filing joint taxpayers with an FAGI of $150,000 or less can subtract their taxable social security benefits for Kansas tax purposes and married filing separate taxpayers with a combined FAGI of $300,000 or less can subtract their taxable social security benefits for Kansas tax purposes. The estimated impact by fiscal year is shown below:

Fiscal Year	SGF	
2010	$ (9.9)	million
2011	$ (10.9)	million
2012	$ (12.0)	million
2013	$ (13.2)	million
2014	$ (14.5)	million

Administrative Impact

The estimated costs necessary to implement this bill are $27,490 in fiscal year 2010. Those costs include about $19,440, or 216 hours, of contract APA programming time. The estimated user testing resources necessary to implement the bill are $8,050, or 280 hours, for testing the new programs.

Administrative Problems and Comments

Taxpayer/Customer Impact

Legal Impact

Approved By:

Joan Wagnon

Joan Wagnon
Secretary of Revenue

Kansas Statutes Annotated

Updated Through the 2007 Legislative Session

Statute Number: 79-32,115

Chapter Title: TAXATION
Article Title: INCOME TAX
Tax Type: Individual Income Tax; Corporate Income Tax; Privilege
Brief Description: Rules pertaining to husbands and wives.
Keywords:

Body:

79-32,115
Chapter 79.--TAXATION
Article 32.--INCOME TAX

79-32,115. Rules pertaining to husbands and wives. (a) In all cases where husband and wife file a joint Kansas income tax return, the determination of Kansas taxable income shall, unless otherwise provided, be made as if husband and wife were one individual taxpayer.

(b) If the federal taxable income of a husband and wife are determined on separate federal returns, their Kansas taxable income shall be separately reported and taxed.

(c) If both husband and wife are residents, and if their federal taxable income is determined on a joint federal return, their Kansas taxable income shall be reported and taxed on the basis of a joint Kansas income tax return.

(d) If both husband and wife are nonresidents, and if their federal taxable income is determined on a joint federal return, their Kansas taxable income shall be reported and taxed on the basis of a joint Kansas income tax return.

(e) If either husband or wife is a resident and the other is a nonresident, and if their federal taxable income is determined on a joint federal return, their Kansas taxable income shall be reported and taxed on the basis of a joint Kansas return as provided under K.S.A. 79-32,110(b).

(f) If neither husband or wife files a federal return, their Kansas taxable income shall be determined on a separate basis unless both elect to have their Kansas taxable income determined on the basis of a joint Kansas tax return.

(g) If Kansas taxable income of a husband and wife is determined on a separate basis, and if both are required to file returns under the provisions of this act, neither spouse shall be allowed to use any tax table promulgated by the secretary pursuant to K.S.A. 79-32,112a unless both use such tax table, and neither shall be allowed the Kansas itemized deductions authorized by K.S.A. 79-32,120, unless both itemize their deductions.

History: L. 1967, ch. 497, § 8; L. 1977, ch. 344, § 4; L. 1978, ch. 405, § 2; L. 1979, ch. 321, § 2; July 1.