

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:00 a.m. on February 10, 2009, in Room 535-N of the Capitol.

All members were present except Representative Sharon Schwartz 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:

Joan Wagon, Secretary, Kansas Department of Revenue
Jim Garner, Secretary, Kansas Department of Labor
Richard Cram, Kansas Department of Revenue
Jeff Scott, Chief Compliance Enforcement Officer for Kansas Department of Revenue
Representative Anthony Brown
Representative Peggy Mast
Lisa McKenzie
Wil Leiker, Executive Vice-President, Kansas AFL-CIO

Others attending:

See attached list.

Bill Introductions:

Representative Elaine Bowers requested a bill introduction that would change the sales tax exemption base, for certain retail businesses, from a US census population requirement to the Kansas Division of Budget revised population number certified to the Secretary of State's office. A motion was made by Representative Carlson to accept the introduction and was seconded by Representative Menghini. The motion carried.

HB 2173 - Income tax credit for certain adoption expenses.

The Chairman opened the hearing on **HB 2173**.

Chris Courtwright briefed the committee on **HB 2173**.

Representative Peggy Mast testified in favor of **HB 2173 (Attachment 1)**. **HB 2173** would enable those who choose to adopt a special needs child an adoption tax credit to help compensate for the additional costs to the family.

Lisa McKenzie testified in favor of **HB 2173 (Attachment 2)**. Mrs. McKenzie and her husband adopted a special needs child. Mrs. McKenzie stated that passage of this bill would allow families adopting special needs children to receive a tax credit from the federal and state government.

Richard Cram, Kansas Department of Revenue, testified in opposition to **HB 2173 (Attachment 3)**. The fiscal note, if the bill was passed, would be \$208,075. He stood for questions.

The Chairman closed the hearing on **HB 2173**.

HB 2175 - Repealing statute which provides penalty for misclassification of employees.

The Chairman opened the hearing on **HB 2175**.

Scott Wells, Office of the Revisor of Statutes, briefed the committee on **HB 2175**.

Representative Anthony Brown testified in support of **HB 2175 (Attachment 4)**. He shared his concern that

CONTINUATION SHEET

Minutes of the House Taxation Committee at 9:00 a.m. on February 10, 2009, in Room 535-N of the Capitol.

competitors gain an unfair advantage through unethical practice of classifying employees as sub contractors. Therefore, they avoid paying taxes and expenses for these employees. He stood for questions.

Rachelle Colombo, Kansas Chamber of Commerce, testified in support of **HB 2175** (Attachment 5). The Kansas Chamber supports the repeal because of its inefficiency, lack of necessity and failure to make determinations upon defined standards. She stood for questions.

Joan Wagon, Secretary, Kansas Department of Revenue, testified in opposition to **HB 2175** (Attachment 6). The vast majority of the investigations are in the building industry. Passage of this bill will stop the flow of information between the Department of Revenue and the Department of Labor. Secretary Wagon stated that the Department of Revenue had obtained the following results to date:

- 149 audit assessments were issued
- \$10,160,248 assessed
- \$705,480 collected payments

Jeff Scott, Chief Compliance Enforcement Officer for Kansas Department of Revenue, testified in opposition to **HB 2175**. The information shared between the Department of Labor and Revenue is limited in scope but is helpful in determining persons not in compliance of **K.S.A. 2008 Supp.44-776**.

Jim Garner, Secretary, Kansas Department of Labor, testified in opposition to **HB 2175** (Attachment 7). Secretary Garner stated that the repeal of **HB 2175** would hinder the ability to conduct misclassification investigations. Sharing information between the two departments, Revenue and Labor, creates efficiency and reduces repetitive work processes. This bill would negatively impact the success of investigating, enforcing the law, and collecting taxes due the state.

Wil Leiker, Executive Vice-President, Kansas AFL-CIO testified in opposition to **HB 2175** (Attachment 8). Mr. Leiker stated that there are companies that employ illegal workers and workers they misclassify as contract labor. Scrupulous employers make more money by not paying state, social security, unemployment and workers compensation taxes.

The Chairman closed the hearing on **HB 2175**.

The next meeting is scheduled for February 11, 2009.

The meeting was adjourned at 10:00 a.m.

PEGGY MAST
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HOUSE OF
REPRESENTATIVES
ASSISTANT MAJORITY LEADER

COMMITTEE ASSIGNMENTS
CHAIR: SOCIAL SERVICES BUDGET
MEMBER: APPROPRIATIONS
HEALTH AND HUMAN SERVICES

ADOPTION TAX CREDIT

February 10, 2009

HB 2173

Mr. Chairman and members of the committee. I thank you for giving us the time to give this bill a fair hearing. Those of you who were on the committee last year will remember the comments from the chairman at that time. He stated that this is the direction we want to go in order to give special needs children a happy future and to save state dollars and resources. This bill will enable individuals who choose to adopt a special needs child, an adoption tax credit to help compensate for the additional costs to that new family.

This legislation was passed some time ago, but it was not worded correctly and therefore has hindered individuals from receiving the credit. My constituent will be following me today to explain in her own words, the problems this has given her.

Again, I want to thank you for your time and thoughtful consideration.

Sincerely,

A handwritten signature in blue ink that reads "Peggy Mast".

Peggy Mast

February 10, 2009

Statement to Committee

RE: HB2173. Review of law pertaining to federal adoption credits and carry forward credits on the Kansas tax return for special needs children adopted out of the Kansas foster care system.

In 2005 and 2006 our accountant took on our behalf a federal adoption carry forward credit on our Kansas returns. After studying the tax instructions and statutes that refer to the special needs credit it seems the K-47 instructions for the Kansas adoption credit, KSA 79-32,202, and SB 432 contain contradictory and circular references, and hopefully do not reflect the intent of lawmakers for those of us that adopt a special needs child out of the Kansas SRS foster care system.

The instructions for 2005 K-47 line 1 limit the special needs credit to only the state credit and not the federal special needs carry forward, although the actual form appears to allow both credits, and KSA 79-32,202 section (a) offers a credit and section (b) takes it away. My accountant suggested that the original purpose was to prevent a double deduction for actual expenses incurred in an adoption. The federal special needs deduction is not based on actual expenses but is a gift deduction for adopting a special needs child. Obviously the "expense" of adopting any child far exceeds the federal credit of \$10,160.

In 2006 the KSA 79-32,202 statute was changed by SB432 to expand the adoption tax credits from 25% to 75% of the federal credit, and attempts to clarify the 2005 law. The letter we received from the state claims "only the special needs credit was allowed for adoptions prior to January 1, 2006." However section (b) actually states "For all taxable years commencing after December 31, 2005, and in addition to the credit provided in subsection (b)," which is the state special needs deduction of \$1500. It does not specify that the adoption has to take place after December 31, 2005, and so it seems the intent of lawmakers was to allow carry forward deductions for adoptions prior to 2005.

Our daughter was adopted in 2003, and we received the \$10,160 credit for adopting a special needs child. The carry forward portions of this credit (which are only allowed for 5 years) effects only those of us with less income, because those with larger incomes would have used up the credit in one or two years. As self employed artists our income is directly related to the time we spend in the studio working. The process of taking in a foster child and working with The Farm to reintegrate her into her birth family (a futile process, as both birth parents were meth users), cost us over \$50,000 in lost income over the 3 year period from 2001 - 2003. The portion of our income that we spend on food, clothing, household supplies, birthday and Christmas gifts, gas for travel to and from daycare and school, school fees and lunches, swimming lessons, piano lessons, soccer, summer camp, martial arts, her college savings account, and a myriad of other constant and varying expenses is significantly higher.

I argued in my letter to the Secretary of Revenue that lawmakers would not have intended to penalize those of us taking into our homes a special needs child by disallowing the federal credit, but must have intended to add to the state credit and give us an additional tax benefit for adopting a child out of the Kansas SRS system. My husband and I did not adopt Cecilie for tax credits, but because we

love her dearly and we are working every day to make sure she has a moral anchor, the education, physical and mental health, and high enough self esteem to become a successful and productive adult. The current tax situation is hurting those like us that have lower incomes, but have moved ahead with an adoption and accepted the challenge of providing a good family to a child that wasn't fortunate enough to be born into one.

Thank you,
Elizabeth (Lisa) McKenzie
958 RD 215
Emporia, KS 66801

Testimony to the House Taxation Committee

Richard Cram

February 10, 2009

Department Concerns with House Bill 2173

Representative Carlson, Chair, and Members of the Committee:

House Bill 2173 would amend K.S.A. 79-32,202 to allow a taxpayer adopting a child with special needs to retroactively claim for prior tax years 2004 and 2005 both the adoption expenses credit as defined in section 23 of the federal internal revenue code (as provided for in 79-32,202(a)), and the \$1500 credit for the adoption of a child in the custody of SR or with special needs (as provided for in 79-32,202(b)). The bill is effective for tax years beginning after December 31, 2003, and allows amended returns to be filed for tax years 2004, 2005, 2006, 2007 and 2008 if the taxpayer only claimed the credit allowed under section 23 of the federal revenue code (79-32,202(a)) or the \$1,500 credit allowed for the adoption of a child in the custody of SRS or with special needs (79-32,202(b)).

The tax credit for adoption expenses has been in existence since 1997. Initially, it provided a tax credit equal to 25% of the adoption expenses credit allowed under federal income tax law. If the child being adopted was in the custody of SRS or was a child with special needs, the taxpayer could claim a credit for \$1500. If the taxpayer claimed the \$1500 credit, then the taxpayer was not eligible to also claim the tax credit equal to 25% of the adoption expenses credit allowed under federal income tax law.

In 2006, K.S.A. 79-32,202 was amended by Senate Bill 432 to expand the adoption expenses tax credit. Effective for tax years 2006 and after, a taxpayer adopting a child with special needs who was a Kansas resident prior to the adoption could claim a tax credit equal to 75% of the federal credit under 79-32,202(a), and in addition, could also claim the \$1500 credit under (b). House Bill 2173 would retroactively allow taxpayers this same tax treatment for tax years 2004 and 2005.

Retroactive tax law changes are not good tax policy. Granting one retroactive change for someone's benefit will only encourage more requests. This proposed change would also affect at least one tax year (2004) for which the three-year statute of limitations (K.S.A. 79-3230) would already have otherwise expired.

House Bill 2173 also has a negative fiscal impact of \$200,000 for FY 2010, at a time when the State can ill afford it. A copy of the Department's fiscal note is attached.

MEMORANDUM

To: Mr. Duane Goossen, Director
Division of Budget

From: Kansas Department of Revenue

Date: 02/05/2009

Subject: House Bill 2173
Introduced as a House Bill

Brief of Bill

House Bill 2173, as introduced, amends K.S.A. 79-32,202 to allow in addition to the adoption credit as defined in section 23 of the federal internal revenue code, a credit for the adoption of a child in the custody of SRS. The bill is effective for tax years beginning after December 31, 2003, and allows amended returns to be filed for tax years 2004, 2005, 2006, 2007 and 2008 if the taxpayer only claimed the credit allowed under section 23 of the federal revenue code or the \$1,500 credit allowed for the adoption of a child in the custody of SRS.

The effective date of this bill is on publication in the statute book.

Fiscal Impact

Passage of this bill would reduce fiscal year 2010 state general fund revenues by about \$.2 million.

Since tax year 2006, taxpayers claiming only the SRS \$1,500 adoption credit have been allowed to also claim the 25% credit allowed against the federal adoption credit amount. Taxpayers that did not claim the federal credit in tax years 2006, 2007 and 2008 can still claim the credit by amending their returns. The statute of limitation for tax year 2006 will run on April 15, 2010.

In tax year 2004, 73 taxpayers claimed only the SRS \$1,500 adoption credit and in tax year 2005, 130 taxpayers claimed only the SRS \$1,500 adoption credit. Assuming all of these taxpayers will amend their 2004, 2005, 2006, 2007 and 2008 Kansas returns and claim the section 23 credit which averages about \$1,025, the fiscal impact in fiscal year 2010 would be about \$208,075 (203 x \$1,025).

Administrative Impact

None.



TOPEKA

HOUSE OF
REPRESENTATIVES

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MEMBER: FEDERAL AND STATE AFFAIRS
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HB 2175

Introduction

Thank you Mr. Chairman, Vice-Chair, Ranking Minority Member and Taxation Committee members, for allowing me to discuss HB 2175.

Many of you know that I make my living outside the Legislature as a carpenter. For two years, I with others, have promoted and passed legislation dealing with businesses misclassifying employees as sub-contractors. I felt, as a person making a living in the construction industry, that competitors were gaining an unfair advantage through unethical practices of classifying employees as sub-contractors and therefore, avoiding the taxes and expenses of having employees.

Another reason why I rallied for the passage of this legislation was I thought this law would help us crack down on employers that hired illegal aliens. It has not. The Department of Labor does not even investigate legal status.

I formerly worked as a Union Carpenter out of the Kansas City local and this was their number one legislative issue for the session of 2006. Many of the proponents here today opposed the misclassification bill in 2006 for numerous reasons and they expressed those objections then, and today I am here to say they told me so. It is not real easy getting legislation passed in the first place and then to stand here today and ask that a law you lobbied for originally be repealed is more difficult than I had thought. I am asking the committee to do just that, and nullify the misclassification law that was passed in 2006.

House Taxation Committee

2-10-09

Attachment 4

Legislative Testimony

HB 2175

February 10, 2009

House Taxation

Rachelle Colombo, Senior Director of Legislative Affairs

Chairman Carlson, members of the Committee:

We appreciate the opportunity to provide testimony in support of HB 2175 which repeals the statutory provision of a division under Department of Labor specifically tasked with investigating alleged misclassification of employees.

The Kansas Chamber voiced concerns about the creation of this division a few years ago. Now, as then, we believe that intentionally fraudulent classification of an employee should be penalized but doing so does not require this division or the onerous and undiscriminating penalties outlined.

KSA 2008 Supp 44-766 states that no person shall knowingly and intentionally misclassify an employee as an independent contractor for the sole or primary purpose of avoiding state income tax withholding. Under current law, those who engage in intentional employee misclassification face a fine equal to their unpaid sum in taxes and will be charged with a misdemeanor and may be imprisoned if convicted.

With such severe penalties looming it is incumbent upon employers to carefully classify employees correctly. To do so, they must know what definition with which to comply.

The National Labor Relations Act, the Fair Labor Standards Act and the Employee Retirement Income Security Act, all define the term "employee" differently and use various tests to distinguish between independent contractors and employees.

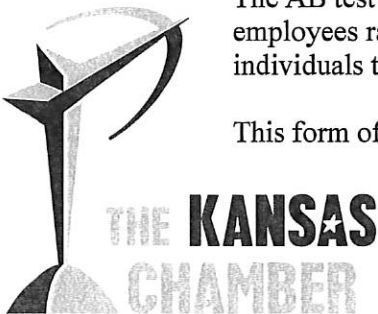
Furthermore, there are twenty common law factors that have historically been used to determine the classification of an employee but both the IRS and the Kansas Department of Labor now use new methods to determine classification.

The IRS has replaced it's use of the longstanding twenty common law factors with "three common factors" while the Kansas Department of Labor favors using the "AB test" for determining employee classification. Simply stated, the AB test asserts that anyone receiving wages is presumed an employee rather than an independent contractor unless the individual is free from control, direction and provides service off premise. The IRS uses behavioral, financial and relationship factors to determine the nature of the classification. (attached)

A uniform standard for employee classification does not exist.

The AB test used by KS DOL lacks definitive clarity, except that it presumes all individuals to be employees rather than independent contractors, and therefore assumes those who hire such individuals to have intentionally misclassified them.

This form of logic and determination of innocence and guilt is self-fulfilling, biased and flawed.



The Kansas Chamber does not support having a government division established to investigate alleged cases of misclassification and to then determine fault, leverage penalties and fines when the law is unclear on the definition and the penalties are so severe.

Intentional misclassification is wrong and should be deterred. But the failings of this division are reflected in reports from its own department.

When asked how many businesses are investigated for misclassification each year, Department of Labor responded that they do not know how many – but they do investigate every claim. This is to say that without merit to the claim, any business which is reported for suspicion of employee misclassification is investigated.

This is a clear illustration of the lacking standards for determining intentional misclassification that would help such a division in focusing their efforts. They should know how many businesses are investigated and whether those investigations have merit. Anything less is a waste of state resources.

Interestingly, Department of Revenue, which shares misclassification information with DOL, was able to report the total number of businesses audited in 2008. 497 companies had been audited by October of last year, 263 of which were found to have misclassified employees. When questioned about the high number of claims, it was indicated that companies reported often retaliate by reporting their competitors. Because there is no clear litmus test established in statute for easily identifying those intentionally breaking the law and evading their withholdings tax, all of these cases are investigated. Here again we see that because of the lacking standards, our resources are being wasted chasing false claims.

Though the Department of Labor could not determine how many businesses were investigated, they did report that 263 employers were identified, resulting in \$204,235.31 dollars in taxes due for 2008. They did not indicate what portion of that amount was comprised of fines versus original unpaid balance. It bears noting that the cost of running the misclassification program through DOL and paying the salary and benefits of the two FTEs allotted exceeds \$130,000 annually.

Finally, when asked how many businesses have been determined to have misclassified for the purpose of hiring illegal immigrants, the answer was that this was outside the scope of their focus and untracked. This is important to note because a large motivation behind the passage of the legislation establishing this division was to crack down on employers intentionally hiring illegal immigrants. As is illustrated by the department's own admission, investigation of misclassification is completely unconcerned with the legal status of the misclassified employee.

Even though employers lack a clear definition of "employee" to base classification upon, most are classifying correctly. But through this program, hundreds are subjected to investigation and penalties if charged. The program's uselessness is demonstrated by their results. When the program began in 2006, only .002% of Kansas businesses were determined to have misclassified employees. This program is an unnecessary recipient of state funding. The majority of Kansas businesses correctly classify employees in compliance with the law.

The Kansas Chamber supports HB 2175 repealing the misclassification investigation program because of its inefficiency, lack of necessity and its failure to make determinations upon defined standards. Thank you for the opportunity to offer these comments on behalf of the Kansas Chamber and its members today.

I am happy to stand for questions.

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



Independent Contractor (Self-Employed) or Employee?

It is critical that you, the employer, correctly determine whether the individuals providing services are employees or independent contractors. Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors.

Before you can determine how to treat payments you make for services, you must first know the business relationship that exists between you and the person performing the services. The person performing the services may be -

- An independent contractor
- An employee (common-law employee)
- A statutory employee
- A statutory nonemployee

In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.

Common Law Rules

Facts that provide evidence of the degree of control and independence fall into three categories:

1. Behavioral: Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another.

The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

Form SS-8

If, after reviewing the three categories of evidence, it is still unclear whether a worker is an employee or an independent contractor, Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (PDF) can be filed with the IRS. The form may be filed by either the business or the worker. The IRS will review the facts and circumstances and officially determine the worker's status.

Be aware that it can take at least six months to get a determination, but a business that continually hires the same types of workers to perform particular services may want to consider filing the Form SS-8 (PDF).

Employment Tax Obligations

Once a determination is made (whether by the business or by the IRS), the next step is filing the appropriate forms and paying the associated taxes.

- Forms and associated taxes for independent contractors
- Forms and associated taxes for employees

Misclassification of Employees

Consequences of Treating an Employee as an Independent Contractor

If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker (the relief provisions, discussed below, will not apply). See Internal Revenue Code section 3509 for more information.

Relief Provisions

If you have a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker. To get this relief, you must file all required federal information returns on a basis consistent with your treatment of the worker. You (or your predecessor) must not have treated any worker holding a substantially similar position as an employee for any periods beginning after 1977. See Publication 1976, Section 530 Employment Tax Relief Requirements (PDF) for more information.

Misclassified Workers Can File Social Security Tax Form

Workers who believe they have been improperly classified as independent contractors by an employer can use Form 8919, Uncollected Social Security and Medicare Tax on Wages to figure and report the employee's share of uncollected Social Security and Medicare taxes due on their compensation. See the full article Misclassified Workers to File New Social Security Tax Form for more information.

References/Related Topics

- Worker Classification Webcast
A critical issue for all businesses is properly classifying workers as employees or independent contractors. The IRS's archived Tax Talk Today Webcast, "What's Hot in Employment Taxes: Independent Contractor or Employee?," focuses exclusively on worker classification issues.
- IRS Internal Training: Employee/Independent Contractor (PDF)
This manual provides you with the tools to make correct determinations of worker classifications. It discusses facts that may indicate the existence of an independent contractor or an employer-employee relationship. This training manual is a guide and is not legally binding.
- Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (PDF)
- Publication 15-A, The Employer's Supplemental Tax Guide (PDF) has detailed guidance including information for specific industries.

Testimony to the House Taxation Committee

Joan Wagnon
Jeff Scott

February 10, 2009

Department Concerns with House Bill 2175

Representative Carlson, Chair, and Members of the Committee:

The problem of employer misclassification of workers is a serious one, resulting in exploitation of workers, evasion of withholding taxes and unemployment insurance contributions, and an artificial advantage for those employers when seeking contract bids in competition with businesses that do comply with the payroll laws.

House Bill 2175 would repeal sections 2 and 3 of 2006 House Bill 2772, which created a coordinated effort by the Departments of Revenue and Labor to address the problem of employers misclassifying workers as independent contractors in order to evade payment of withholding taxes and unemployment insurance contributions.

Section 2 of 2006 House Bill 2772 added K.S.A. 2008 Supp. 44-766, which makes it unlawful for an employer to knowingly and intentionally misclassify an employee as an independent contractor for the sole or primary purpose of avoiding payment of employer withholding tax or unemployment insurance contributions.

Section 3 of 2006 House Bill 2772 amended K.S.A. 79-3234, the statute protecting the confidentiality of income tax records, to allow the Department of Revenue to share withholding tax and payroll information with the staff attorneys of the Department of Labor when the taxpayer is suspected of violating K.S.A. 2008 Supp. 44-766, and to identify to the staff attorneys those persons under audit or investigation concerning compliance with the payroll tax laws, and the status of those investigations.

Since enactment of 2006 House Bill 2772, compliance staff at the Departments of Labor and Revenue have worked closely together to share information and develop strategies for identifying employers who misclassify their workers. The Departments have developed a Memorandum of Understanding for the exchange of Labor employer information that will assist Revenue in identifying employers failing to properly withhold taxes on wages, and Revenue information that will assist Labor in identifying employers who misclassify their workers.

As a result of coordination between Labor and Revenue staff on employer misclassification investigations, since 2006, Revenue's audit staff has obtained the following results:

Number of audit assessments issued:	149
Amount of assessments:	\$10,160,248
Amount of payments to date:	\$705,480

The Department of Revenue has recently dedicated 5 compliance staff persons to the misclassification program, and anticipates recovering \$3 million in delinquent employer withholding through this effort in FY 2010, and at least that amount per fiscal year going forward as the program progresses. House Bill 2175 would essentially dismantle this coordinated effort between the Departments of Revenue and Labor, in that the Department of Revenue would no longer be able to share any taxpayer information with staff attorneys of the Department of Labor in connection with employer misclassification investigations. Not only does this impair the compliance area for both agencies, it severely hinders our ability to work together effectively to reduce state costs and boost efficiencies. Also, repeal of K.S.A. 2008 Supp. 44-766 will eliminate crime of misclassification of employees. By dismantling of the employer misclassification program, House Bill 2175 would have a negative fiscal impact of \$3 million in FY 2010 in employer withholding tax that otherwise we would expect to recover through the program. The negative fiscal impact in out fiscal years would be at least that amount.

We urge the Committee to vote against passage of House Bill 2175.



DEPARTMENT OF LABOR

Kathleen Sebelius, Governor
Jim Garner, Secretary

www.dol.ks.gov

Testimony in opposition of 2009 House Bill 2175
House Taxation Committee
Jim Garner, Secretary
Kansas Department of Labor
10 February 2009

Chairperson Carlson and Members of the House Taxation Committee:

Thank you for the opportunity to testify today, opposing 2009 House Bill 2175.

For two years, the Kansas Department of Labor has benefited from the law that allows the Kansas Department of Revenue and Kansas Department of Labor to share taxpayer information for the purposes of conducting investigations into the misclassification of employees – misclassification which avoids state income tax and state unemployment tax liability. Unfortunately, House Bill 2175 would repeal that ability and hinder those investigations and the cooperation between the two agencies.

This bill would greatly impede our ability to do our job. It would hinder our ability to conduct worker misclassification investigations. By sharing information between the Kansas Department of Revenue and Kansas Department of Labor, we are able to create efficiencies and reduce repetitive work processes because we are able to communicate with each other. This bill would eliminate that capability. Our two agencies should have the ability to talk to each other.

In addition, we have had great success in the past year because our two agencies have been able to work together and share information. In Calendar Year 2008, we found 263 employers misclassifying 2,193 employees. Our dedicated worker misclassification unit conducted investigations that found over \$10.5 million dollars (\$10,875,374.85) in previously unreported wages paid to misclassified workers that should have been reported to the State for unemployment tax purposes. These investigations resulted in \$204,235 in unpaid unemployment taxes being discovered. Our ability to conduct these investigations, enforce the law, and collect these taxes would be made more difficult without the cooperation and communication between these two agencies. This bill would negatively impact that success.

Should this bill be enacted into law, there would be increased costs for both agencies because we could not share information or tasks. The increase in costs would result from duplication of efforts by each agency having to perform independent investigations and audits on the same employers. Additionally, without the useful tool of sharing information evaders of the law may go undetected resulting in a loss of tax revenues.

Thank you for the opportunity today to share our opposition to House Bill 2175. We believe this bill would negatively impact the work we have been doing for the past two years, and it would create unnecessary duplication of work and inefficiencies for our agencies.



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Mark Love

Executive Secretary
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Andy Sanchez

Executive Vice
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Wil Leiker

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Earl Ransom
Steve Rooney
Rory Schaffer
Deb Shepard
Mark Shughart
Richard Taylor
Dan Woodard*

**Testimony
IN OPPOSITION TO HB 2175
Before the Kansas Taxation Committee
February 10, 2009**

By Wil Leiker, Executive Vice President, Kansas AFL-CIO

Mr. Chairman and committee members, thank you for the opportunity to appear in front of you today. My purpose here today is to ask you to reject HB 2175 which makes violating the law attractive and easier.

The current law which HB 2175 is attempting to "gut" was a compromise attempt to level the competitive field for all employers. The vast majority of all Kansas employers are honest tax paying individuals and groups. But, there are those who employ illegal workers and workers they misclassify as contract labor all in an attempt to circumvent paying the proper taxes on these individuals. Each day thousands of illegal workers enter the United States and some are employed in Kansas under very questionable circumstances.

The current law allows the Department of Revenue and the Department of Labor to work together to determine if an employer is violating current law. Why in this time of great State financial challenges would you as lawmakers want to make it easier for a small group of employers to not pay their fair share of taxes? Would it be to give that small group a competitive edge over all the law abiding employers or would it be to allow illegal workers to replace tax-paying Kansas workers; thus, allowing a few scrupulous employers to make more money by not paying state taxes, social security taxes, unemployment taxes and workers compensation taxes.

Calendar year 2008, the Kansas Department of Labor investigated misclassification of worker issues involving 263 employers affecting 2193 workers. Through these investigations, the agency discovered more than \$10.8 million in previously unreported wages. These investigations resulted in determinations of over \$204,000 in UI tax debt. (1)

Instead of making it more difficult for everyone to cheat at paying their share of taxes, HB 2175 would eliminate some of the needed checks and balances which ensure compliance with existing tax laws.

(1) Kansas Department of Labor



Please ask yourselves, do I want to help employ illegal workers? Do I want to advantage the employers who break the laws of this State? Do I, in this time of need for State resources, want to create more ways for the few to not meet their responsibilities?

Please reject HB 2175

Thank you.