

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Les Donovan at 10:30 a.m. on January 29, 2006, in Room 535-N of the Capitol.

All members were present except:
Senator Chris Steineger- excused

Committee staff present:
Gordon Self, Office of the Revisor of Statutes
Scott Wells, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Chris Courtwright, Kansas Legislative Research Department
Mary Jane Brueck, Committee Assistant

Conferees appearing before the committee:
Senator John Vratil, Senate Vice President
Whiitnet Damron, Flint Oak LLC & Kansas Sport Hunting Association
Ken Corbet, Ravenwood Hunting Reserve
John Donley, Kansas Livestock Association
Richard Cram, Department of Revenue
Ronald Richey, private citizen
April Holman, Kansas Action for Children
Sarah Byrne, Assistant Attorney General, Alcoholic Beverage Control

Others attending:
See attached list.

Chairman Donovan opened the meeting and heard requests for introduction of bills. John Pineger requested an amendment to the Kansas Constitution Artical 11, Section 2 with a definition of public utility and taxation of stored natural gas in underground facilities.

Sen. Barnett requested a bill to provide a change in Kansas Income Tax credits for adoption expenses. Discussion was held. A motion of approval was made by Sen. Brownlee and seconded by Sen. Holland. Motion passed.

John Peterson requested a bill regarding property tax exemption for leased vehicles. Discussion was held. A motion of approval was made by Sen. Brownlee and seconded by Sen. Holland. Motion passed.

Sen. D. Schmidt requested a bill to provide tax benefits for disabled veterans. Discussion was held. A motion of approval was made by Sen. Brownlee and seconded by Sen. Holland. Motion passed.

Chairman Donovan opened the hearing on **SB 100 - Sales tax exemption for fees for guided and non-guided hunts and fishing expeditions and sale of game birds for hunting.** Senator John Vratil, Senate Vice President spoke in favor of the bill. (Attachment 1) Whitney Damron, representing Flint Oak LLC and the Kansas Sport Hunting Association also spoke in favor of the bill. (Attachment 2) Ken Corbet, Ravenwood Hunting Reserve gave his reasons to support the bill. (Attachment 3) Richard Cram, Department of Revenue is also a proponent. (Attachment 4) John Donley, Kansas Livestock Association had submitted written testimony in favor of the bill. (Attachment 5) Opponents to this bill were Ronald Richey, private citizen (Attachment 6) and April Holman, Director of Economic Policy for Kansas Action for Children (Attachment 7)

Supporting **SB 97 - Prescribing penalties for violations of liquor enforcement tax act by retailers.** was Sarah Byrne, Assistant Attorney General, Alcoholic Beverage Control (Attachment 8) She proposed an amendment to the bill. Discussion was held.

Hearing on **SB 98 - Period of limitations for refunds and adjustments of income by the internal revenue service under the Kansas income tax act.** was opened. Richard Cram, Department of Revenue spoke in

CONTINUATION SHEET

Minutes of the Senate Assessment And Taxation Committee at 10:30 a.m. on , in Room 535-N of the Capitol.

favor of the bill. (Attachment 9)

Chairman Donovan asked for approval of the minutes. Sen. Brownlee moved they be approved. Sen. Holland seconded the motion. Motion passed

Sen. Holland asked to return to Introduction of Bills. Chairman approved. Sen Holland requested a tax deferral bill. A motion of approval was made by Sen. Marshall; seconded by Sen. Brownlee. Motion carried.

The next meeting is on call of the Chairman. Watch next week's Calendar for the exact day.

The meeting was adjourned at 12:10 p.m.

SENATE
ASSESSMENT & TAXATION COMMITTEE

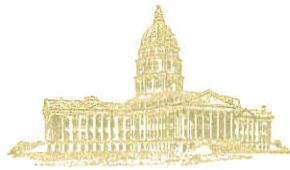
GUEST LIST

DATE: 1/29/09

NAME	REPRESENTING
MIKE REECHT	Acker Braden
Ken Corbett	KSHA
Whitney Gunn	Hit oric / KS Sport Fishing Assn.
Wigh Keck	Mein Law firm
SARAH BYRNE	KDOR/ABC
John Peterson	Capital Strategies
April Holman	Kansas Action for Children
LON STANECI	NORTHERN Natural Gas
MIKE TAYLOR	UNIFIED GOVT/WYCO-KCK
JAY BEFORT	KANSAS DEPT. OF REVENUE
Karyn Lopez	Kansas Dept of Revenue
Courtney Hadley	Kansas Dept. of Revenue
John D. Pinegar	Pinegar Smith + Associates, Inc.
RONALD RICHIE	ME
Michelle Butler	Capital Strategies
Bob Challquist	Kansas Dept. of Revenue
James Bayle	Dept. of Revenue
David R. Corbin	K.DOR

State of Kansas

JOHN VRATIL
SENATOR, ELEVENTH DISTRICT
JOHNSON COUNTY
LEGISLATIVE HOTLINE
1-800-432-3924



Vice President Kansas Senate

COMMITTEE ASSIGNMENTS

VICE CHAIR: EDUCATION
WAYS AND MEANS
MEMBER: JUDICIARY
ORGANIZATION, CALENDAR
AND RULES
INTERSTATE COOPERATION
KANSAS CRIMINAL
CODE RECODIFICATION
COMMISSION

Testimony Presented to
Senate Assessment and Taxation Committee
By Senator John Vratil
January 29, 2009
Concerning Senate Bill 100

Good morning! Thank you for the opportunity to appear before the Senate Assessment and Taxation Committee in support of Senate Bill (SB) 100. Senate Bill 100 seeks to exempt from sales tax the participation in guided and non-guided hunting and fishing expeditions and hunting or fishing leases in Kansas. It would exempt all sales of game birds purchased primarily for use in hunting.

In December of 2007, the Kansas Department of Revenue (KDOR) determined it had the authority to impose a sales tax on professional services associated with guided and non-guided hunting and fishing in Kansas. Additionally, KDOR determined it also could apply a sales tax to farm ground leases executed for hunting and fishing. In response, the Senate Committee on Natural Resources introduced 2008 SB 487 to clarify that the proposed sales tax was not appropriate and should not be applied. The bill passed the Senate by a 40/0 vote; however, it was not included in the 2008 Legislature's final tax package. On May 7, 2008, KDOR agreed to "stay further enforcement of collection of sales tax on gross receipts for guided and non-guided hunting and fishing for one year.

Recently, my staff contacted KDOR and inquired as to the status of the Department's previous position. Richard Cram, responded: "The Department's position on this issue, once the moratorium expires effective May 7, 2009, is stated in the ... revised Notice 07-08. [Copy attached to this testimony.] Charges for guided and non-guided hunts should fall within the sales tax imposition in K.S.A. 79-3603(m), and the retail sale of game birds would be considered subject to sales tax as the sale of tangible personal property. The lease or rental of hunting rights to real property is considered a real property interest, and lease or rental payments made pursuant thereto are not subject to sales tax. So unless a statutory exemption is enacted for charges for guided and non-guided hunts as well as game bird sales, the Department would view them as subject to sales tax when the moratorium expires."

Kansas is an agricultural state. It is recognized as an excellent place to hunt and fish. People come from all over the United States and foreign countries to enjoy the hunting and fishing opportunities Kansas offers. Since my tenure in the Legislature began in 1998, I've observed a

HOME
9534 LEE BLVD.
LEAWOOD, KS 66206
(913) 341-7559
jvratil@lathropgag.com

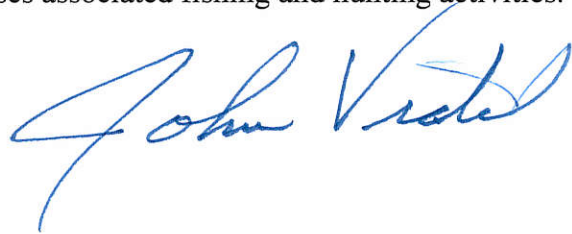
DISTRICT OFFICE
10851 MASTIN BLVD.
SUITE 1000
OVERLAND PARK, KS 66210-2007
(913) 451-5100
FAX (913) 451-0875

Senate Assessment and Taxation
JANUARY 29, 2009
Attachment 1

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Testimony Presented to
Senate Assessment and Taxation Committee
January 29, 2009

dedicated effort to include enhanced agro-tourism as part of the state's economic development. When people come to our state to hunt and fish, they spend money on a variety of services that collect sale tax: hotels, fuel, food, entertainment, hunting and fishing supplies, etc; all of which currently generate sales tax. We should continue to look to these sources for revenue.

Please support SB 100 to place in law the current policy of not applying sales tax to guided and non-guided hunting and fishing services nor to the leases associated fishing and hunting activities.

A handwritten signature in blue ink, reading "John Vrede". The signature is written in a cursive style with a large, sweeping initial "J".

KANSAS DEPARTMENT OF REVENUE

February 4, 2008

Revised Notice 07-08

Sales Tax Treatment of Charges for Participation in Guided vs. Non-guided Hunting and Retail Sale of Game Birds

This notice sets forth the Department's guidance on the sales tax treatment of charges for guided and non-guided hunts, and on the retail sale of game birds. To the extent this guidance is inconsistent with prior statements or interpretations issued by the Department, this guidance shall control.

Charges for Participation in Guided vs. Non-guided Hunting

The gross receipts derived from the participation in guided and non-guided hunts, as well as sporting clays are subject to Kansas retailers' sales tax. Kansas law imposes tax on the gross receipts received from the sale of tangible personal property, enumerated services and certain admissions. K.S.A 79-3603(m) imposes sales tax on the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities. K.A.R 92-19-22b(a)(1) defines "sports, games, and other recreational activities" as follows:

diversions that restore or refresh strength and spirits by means of pastime, exercise, or similar activities that involve strength, speed, dexterity, stamina, or training. These activities shall include golf, pool, billiards, skating, bowling, swimming, skiing, baseball, softball, basketball, volleyball, racquetball, handball, squash, tennis, carnival rides, motor sports, batting practice, skeet, trap, target shooting, horse riding, pinball, darts, electronic games, physical fitness services, and all other similar activities.

Hunting falls within the category of "sports, games, and other recreational activities," and any fees or other charges for participation in hunting, whether a guide is or is not included, are subject to Kansas sales tax.

The lease or rental of hunting rights to real property is considered a real property interest, and lease or rental payments made pursuant thereto are not subject to sales tax.

Retail Sale of Game Birds

The retail sale of game birds within Kansas is subject to Kansas retailers' sales tax (the seller should collect sales tax on the selling price). Kansas sales tax is also due on the sale of game birds when sold as pets, when sold directly to the consumer who will use them as a food source, and when the purchaser cannot produce a valid Kansas Exemption Certificate.

The seller is not required to collect Kansas sales tax on sale of game birds shipped or delivered by common carrier to point outside of the State of Kansas. The seller should retain for audit

purposes shipping documents, such as the bill of lading or invoice showing the shipping address indicating the out-of-state delivery.

If the buyer provides the seller with a Kansas Exemption Certificate indicating that the purchase of game birds is exempt for Kansas retailers' sales tax, then the seller is not required to collect sales tax. Some of the most common exemptions in the game bird industry are:

(1) Kansas Resale Exemption Certificate – This certificate indicates that the seller should not collect the sales tax because the buyer is going to resell the birds and collect sales tax. A prime example would be the purchase of birds by a sport hunting preserve. (See p. 43, Publication KS-1520).

(2) K.S.A. 79-3606(o) exempts all sales of fowl, the primary purpose of which is for use in the production of offspring or food production. A prime example would be the sale of birds to another producer who is going to use them to as breeding stock or, to a slaughter house that is going to process the birds for human consumption.

(3) Exempt Entity – No sales tax is due when birds are sold to an exempt entity such as a school, state of Kansas, federal government. Each of these exempt entities should have an Exemption Certificate issued to them similar to the one found on page 16 of Publication KS-1520.



TESTIMONY

TO: The Honorable Les Donovan, Chair
And Members of the Senate Committee on Assessment and Taxation

FROM: Whitney Damron
On behalf of:

Flint Oak, LLC
Kansas Sport Hunting Association

RE: SB 100 - An Act concerning sales taxation; exemptions; hunting and fishing.

DATE: January 29, 2009

Good morning Chairman Donovan and Members of the Senate Committee on Assessment and Taxation. I am Whitney Damron and I appear before you today on behalf of Flint Oak, LLC and the Kansas Sport Hunting Association in support of SB 100 clarifying the state's sales tax policy for guided and non-guided hunting and fishing services, hunting and fishing land leases and the taxation of game birds used in hunting.

Flint Oak, LLC is a world-class hunting, fishing and outdoor recreational shooting facility located in Elk County, Kansas approximately 80 miles east of Wichita.

www.flintoak.com

The Kansas Sport Hunting Association is a non-profit association hunting service professionals and game bird producers working together to promote sport hunting, shooting sports and game bird production in our state.

www.huntkansas.org

Those of you in the Legislature last year may recall SB 487 that was very similar to this proposal. SB 487 was introduced after the Kansas Department of Revenue made a formal determination in the fall of 2007 that certain hunting guide services were subject to a sales tax after years of providing conflicting advice to those involved in this industry. In 2007, the Department of Revenue sent self-audit notices to those they could identify were involved in the hunting and game bird industry requesting the payment of back taxes on receipts for guide services for the preceding three years. The Department later amended their efforts and sought to enforce a change in the tax policy beginning on January 1, 2008. Eventually legislation was introduced in 2008, further staying enforcement of Revenue's new policy until the Legislature had an opportunity to clarify this issue.

Although SB 487 was passed in the Senate by a vote of 40-0 and the same language was included in a House tax bill that was subsequently passed by a strong majority, the provisions of SB 487 were not included in the final tax package of 2008. However, the Kansas Department of Revenue adopted Notice 08-02 on May 7, 2008 effectively staying enforcement of sales taxes on guided and non-guided hunts and on the retail sale of game birds until May 6, 2009 to provide the 2009 Legislature an opportunity to revisit this issue.

SB 487 also included language exempting clay target shooting sports from sales tax. While I can argue the merits of why that is an appropriate exemption worthy of consideration, both Flint Oak and the Kansas Sport Hunting Association recognize the challenges the state faces in regard to revenues and made a decision to focus their legislation this year exclusively on the policy issue of whether guided and non-guided hunts, land leases and game birds should be exempt from sales taxes and not the economic development aspects of ancillary sales tax exemptions.

Guided and Non-guided Hunts.

Kansas has a long history of not collecting a sales tax on professional services. We believe the imposition of a sales tax on hunting and fishing guide services is a sales tax on professional services and should not be allowed under Kansas law. Should sales taxes be required for guided and non-guided hunts, we believe sales tax exemptions on other professional services are at risk for interpretation by the Kansas Department of Revenue.

Hunting and Fishing Leases.

Kansas also has a long history of not collecting a sales tax on agriculture leases (or any other kind for that matter). Based upon statements from the Kansas Department of Revenue made to the Senate Committee on Assessment and Taxation and the House Taxation Committee, I do not believe it is the intent of the Department to collect sales taxes on land leases, whether for agriculture or hunting. However, due to statements made by the Department during hearings last year, the Legislature decided include language in SB 487 that clearly states such leases are not subject to a sales tax.

Game Birds Used in Hunting.

Game Birds are primarily used in hunting at controlled shooting areas, which are licensed by the state. When an entity such as Ravenwood Hunting Preserve or Flint Oak provides hunting opportunities for their customers, they are required to replace any and all birds taken off of their property by their customers. And, any birds released onto a licensee's land become the property of the state, not the licensee. Although a controlled shooting area operator purchases game birds from a bird breeder, they do not actually take title to the birds, as title ultimately rests with the state. Accordingly, we believe the nature of how the game birds are utilized and where title rests should exempt their sale for hunting from a sales tax.

In summary, we would respectfully suggest this issues covered by SB 100 is an area of tax law that (apparently) is not adequately defined in statute or case law, as evidenced by the differing opinions that have come from the Department of Revenue over the years. We believe legislative intent is to exempt professional services and leases from a sales tax. Furthermore, given the nature of the use of game birds in the course of hunting, they should be exempt from a sales tax, too.

KDOR Order 08-02 is due to expire on May 6, 2009. Accordingly, it is important for the Kansas Legislature to clarify this issue prior to that date, as most operators are already booking hunts for the fall seasons.

WBD

Attachment: KDOR Order No. 08-02

May 7, 2008

Notice 08-01

**Sales Tax Treatment of Charges for Participation in Guided and Non-guided
Hunting and Retail Sale of Game Birds**

This notice is to advise that the Department is currently reviewing its interpretation on the sales tax treatment of charges for guided and non-guided hunts, and on the retail sale of game birds. Effective May 7, 2008 through May 6, 2009, the Department is suspending enforcement of collection of sales tax on charges for participation in guided or non-guided hunts, and on the retail sale of game birds.

In Revised Notice 07-08 dated February 4, 2008, the Department stated its interpretation that the gross receipts derived from the participation in guided and non-guided hunts are subject to Kansas retailers' sales tax, pursuant to K.S.A. 79-3603(m). During the 2008 Legislative Session, legislation was introduced that would exempt such gross receipts from sales tax. Although no such legislative was enacted, the Department is in the process of reviewing its interpretation. During such review and effective May 7, 2008 through May 6, 2009, subject to any legislative action taken during the 2009 Legislative Session, the Department will not enforce collection of sales tax on the gross receipts derived from the participation in guided and non-guided hunts, and on the retail sale of game birds. Any sales tax on such gross receipts already collected or remitted to the Department as of May 6, 2008 shall be deemed lawfully paid and shall not be refunded.

Taxable sales of meals, tangible personal property and lodging do not fall within the Department's forbearance on enforcement, and collection and remittance of applicable sales tax on those items should continue.

Questions concerning this notice may be directed to Policy & Research, telephone number 785-296-3081.

TESTIMONY

To: Chairman Les Donovan
And Members of the Senate Committee on Assessment and Taxation

FROM: Ken Corbet
Ravenwood Hunting Preserve

RE: SB 100

DATE: January 29, 2009

Good morning Chairman Donovan and Members of the Committee.

Thank you for the opportunity to appear before the Senate Committee on Assessment and Taxation in support of SB 100.

On December 7, 2007, the Kansas Department of Revenue made a decision to impose a sales tax on guided and non-guided hunts in Kansas. During hearings on SB 487 in 2008, which was a bill similar to this legislation, representatives of the Department indicated it would be appropriate to apply a sales tax on farm ground leases for hunting and fishing. The Department later backtracked on that statement, but it certainly raised concerns as to whether the Department might one day change its mind again on that subject.

The Legislature has worked hard to support and encourage agriculture-based tourism. Before Kansas was a state and thereafter, people have been coming to Kansas for its great hunting. For well over 100 years, we as Kansans have offered guided and unguided hunts and there was never a sales tax conceived or thought of because hunting is truly a "service provided business."

As a client seeks the professional services of an attorney or an accountant, so does the client look for a hunt provider.

In conclusion, I believe it is unfair and contrary to established law to allow non-elected individuals to determine tax policy over professional services. This is longstanding policy appropriately made by the Legislature. All that SB 100 does is codify that policy and clear this issue up once and for all for all of us involved in the guided and non-guided hunting business.

Thank you.

Ken Corbet



Senate Assessment and Taxation
JANUARY 29, 2009
Attachment 3

Testimony to the Senate Committee on Assessment and Taxation

Richard Cram

January 29, 2009

Department Concerns with Senate Bill 100

Senator Donovan, Chair, and Members of the Committee:

Senate Bill 100 would reverse the Department's interpretation as stated in revised Notice 07-08 (attached) explaining the sales tax imposition in K.S.A. 79-3603(m) on the gross receipts derived from the participation in guided and non-guided hunts, and the gross receipts from the retail sale of game birds. If Senate Bill 100 is enacted, such charges will be exempt. Senate Bill 100 is similar to 2008 Senate Bill 487, which was not enacted last year. However, at the end of the 2008 Legislative Session, the Department issued Notice 08-02 (attached) imposing a one-year moratorium on enforcement of sales taxation on charges for guided and non-guided hunts, as well as the retail sale of game birds. That moratorium on enforcement will expire after May 6, 2009.

The Department of Wildlife and Parks reports that for 2006, the following number and types of hunting licenses were issued to non-residents:

644	non-resident combined hunting and fishing
57,944	non-resident hunting
9,986	controlled shooting area
593	48-hour water fowl
2,294	non-resident junior (under 16)

Fees and charges from participation in hunting—particularly from non-residents—is a growing business in Kansas. The sales tax imposition on charges for guided and non-guided hunting provides a way for Kansas to benefit and derive revenues from that tourism activity.

This proposed exemption will cause further erosion of the sales tax base at a time when this State can ill afford the loss of revenue. The Department's fiscal note is attached. This proposed exemption does not further any governmental function or decrease any burden on state or local government.

Our neighbor state, Missouri, does impose sales tax on fees for participation in hunting.

KANSAS DEPARTMENT OF REVENUE

February 4, 2008

Revised Notice 07-08

Sales Tax Treatment of Charges for Participation in Guided vs. Non-guided Hunting and Retail Sale of Game Birds

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diversions that restore or refresh strength and spirits by means of pastime, exercise, or similar activities that involve strength, speed, dexterity, stamina, or training. These activities shall include golf, pool, billiards, skating, bowling, swimming, skiing, baseball, softball, basketball, volleyball, racquetball, handball, squash, tennis, carnival rides, motor sports, batting practice, skeet, trap, target shooting, horse riding, pinball, darts, electronic games, physical fitness services, and all other similar activities.

Hunting falls within the category of "sports, games, and other recreational activities," and any fees or other charges for participation in hunting, whether a guide is or is not included, are subject to Kansas sales tax.

The lease or rental of hunting rights to real property is considered a real property interest, and lease or rental payments made pursuant thereto are not subject to sales tax.

Retail Sale of Game Birds

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The seller is not required to collect Kansas sales tax on sale of game birds shipped or delivered by common carrier to point outside of the State of Kansas. The seller should retain for audit

purposes shipping documents, such as the bill of lading or invoice showing the shipping address indicating the out-of-state delivery.

If the buyer provides the seller with a Kansas Exemption Certificate indicating that the purchase of game birds is exempt for Kansas retailers' sales tax, then the seller is not required to collect sales tax. Some of the most common exemptions in the game bird industry are:

(1) Kansas Resale Exemption Certificate – This certificate indicates that the seller should not collect the sales tax because the buyer is going to resell the birds and collect sales tax. A prime example would be the purchase of birds by a sport hunting preserve. (See p. 43, Publication KS-1520).

(2) K.S.A. 79-3606(o) exempts all sales of fowl, the primary purpose of which is for use in the production of offspring or food production. A prime example would be the sale of birds to another producer who is going to use them to as breeding stock or, to a slaughter house that is going to process the birds for human consumption.

(3) Exempt Entity – No sales tax is due when birds are sold to an exempt entity such as a school, state of Kansas, federal government. Each of these exempt entities should have an Exemption Certificate issued to them similar to the one found on page 16 of Publication KS-1520.

May 7, 2008

Notice 08-02

**Sales Tax Treatment of Charges for Participation in Guided and Non-guided
Hunting and Retail Sale of Game Birds**

This notice is to advise that the Department is currently reviewing its interpretation on the sales tax treatment of charges for guided and non-guided hunts, and on the retail sale of game birds. Effective May 7, 2008 through May 6, 2009, the Department is suspending enforcement of collection of sales tax on charges for participation in guided or non-guided hunts, and on the retail sale of game birds.

In Revised Notice 07-08 dated February 4, 2008, the Department stated its interpretation that the gross receipts derived from the participation in guided and non-guided hunts are subject to Kansas retailers' sales tax, pursuant to K.S.A. 79-3603(m). During the 2008 Legislative Session, legislation was introduced that would exempt such gross receipts from sales tax. Although no such legislative was enacted, the Department is in the process of reviewing its interpretation. During such review and effective May 7, 2008 through May 6, 2009, subject to any legislative action taken during the 2009 Legislative Session, the Department will not enforce collection of sales tax on the gross receipts derived from the participation in guided and non-guided hunts, and on the retail sale of game birds. Any sales tax on such gross receipts already collected or remitted to the Department as of May 6, 2008 shall be deemed lawfully paid and shall not be refunded.

Taxable sales of meals, tangible personal property and lodging do not fall within the Department's forbearance on enforcement, and collection and remittance of applicable sales tax on those items should continue. Charges for participation in guided and non-guided hunts should be billed separately from charges for taxable sales of meals, tangible personal property, and lodging.

Questions concerning this notice may be directed to Policy & Research, telephone number 785-296-3081.

2009 Senate Bill 100a Fiscal Note

Introduced as a Senate Bill

Brief of Bill

Senate Bill 100, as Introduced, amends K.S.A 79-3603 (m) to exclude from taxation any fees and charges for participation in guided and non-guided hunts and fishing expeditions and excursions and hunting or fishing leases . It also amends K.S.A 79-3606 to add an exemption for sales of game birds the primary purpose of which is use in hunting.

The Act would be effective July 1, 2009.

Fiscal Impact

The loss of state sales tax revenue in fiscal year 2010 is estimated at \$500,000. Loss to the state general fund would be \$438,500 and \$61,500 to the highway fund. Local sales tax lost is estimated at \$125,000

The 2006 National Survey of Fishing, Hunting and Wildlife Associated Recreation as published by the U.S. Fish & Wildlife Service provides expenditure data on hunting and fishing in Kansas. Total expenditures for hunting were \$245.4 M and \$245.3 M for fishing, which includes food and lodging, transportation, equipment, auxiliary, other trip costs and other items costs. The "other trip" expenditures amounted to \$10 million for hunting and \$32.4 million for fishing and of that, the amounts expended on guide fees, pack trip or package fees make up 94% (\$9.4 M) for hunting and 10% (3.2 M) for fishing. The loss of state sales tax from these fees and charges would be \$668,000 annually. However, the department has issued a notice stating that the leasing of hunting and fishing rights on private property by individuals are not subject to sales tax, which will lower the fiscal note by one-third. Exempting the sales of game bird sales is estimated to result in the additional loss of \$50,000, making the total fiscal note for fiscal year 2010 at \$500,000

Estimate sales tax reductions are provided below.

Fiscal Year	Total	SGF	Hwy	Local
2010	\$500,000	\$438,500	\$61,500	\$125,000
2011	\$512,500	\$449,463	\$63,038	\$128,125
2012	\$525,313	\$460,699	\$64,613	\$131,328
2013	\$538,445	\$472,217	\$66,229	\$134,611
2014	\$551,906	\$484,022	\$67,884	\$137,977

Administrative Impact

Sales tax publications would require revision at a cost of \$26,900.

Administrative Problems and Comments

The proposal would exempt fees and charges for participation in guided and non-guided hunts. Other fees that may be associated with a hunt such as meals, lodging, equipment rental, and transportation charges would continue to be subject to sales tax. The department would require invoices to separately list fees and charges for the hunts separate from other taxable charges in order for the fees and charges for the guided or non-guided hunts to be exempt from tax.

Taxpayer/Customer Impact

Hunters would no longer be required to pay sales tax on guided and non-guided hunts. Sellers of game birds would no longer be required to collect sales tax on their sales.

Legal Impact



Since 1894

TESTIMONY

To: The Senate Committee on Assessment and Taxation
Sen. Les Donovan, Chairperson

From: John Donley, Assistant General Counsel

Date: January 29, 2009

Subject: **Senate Bill 100** -Sales tax exemption for fees for guided and non-guided hunting and sale of game birds for hunting

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 5,500 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.

Good morning. My name is John Donley, and I am the Assistant General Counsel for the Kansas Livestock Association (KLA.) I am submitting this testimony today to extend KLA's support of SB 100.

Guided and non guided hunts have become a significant portion of many of our members operations in recent years. These operations view this activity as a way to diversify their operation as well as an opportunity to provide additional income to their operation. In many cases, farmers and ranchers have used hunting and guide services as a means to provide enough additional income to allow a family member to become actively involved in the farming or ranching operation. All of the income generated from these activities is subject to income tax.

In other situations, farmers and ranchers have begun leasing the hunting rights on their property to individuals and/or to guides and outfitters. Once again, these leases are subject to income tax. In the past, it has been mentioned that these lease agreements may be subject to sales tax. While KLA does not believe that is the current interpretation by the Department of Revenue, we feel it is important to ensure that this fact is duly noted.

Senate Assessment and Taxation
JANUARY 29, 2009
Attachment 5

January 29, 2009

Dear Chairman of the Senate Tax Committee
and Tax Committee of the Senate:

I oppose Bill SB 100. When I have visited Arkansas, for the past ten years in the spring, and have taken a guided tour up the White River for fishing I have been required to pay a sales tax on the guided tour.

Enclosed is a copy of their ad and it states that it is the cost of the guide plus tax.

Thank you.



Ronald G. Richey
2332 SE 22nd Terrace
Topeka, Kansas 66605-1745
(785) 234-4172

ronaldgrich@aol.com

Senate Assessment and Taxation
JANUARY 29, 2009
Attachment 6



Bill Terry's Fishing Service

Calico Rock Trout Dock - Calico Rock, Arkansas

Information

Gallery

Testimonials

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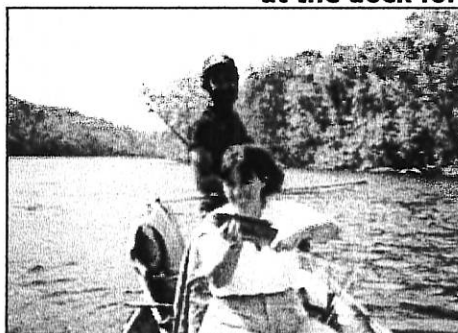
GUIDED FISHING TRIPS		
Full Day*	per person	\$95.00 + Tax & Bait
*Includes a sandwich lunch		
Half Day	per person	\$70.00 + Tax & Bait



**Fuel Charge - \$5.00 - 1/2 day
\$10.00 - Full day**

All guided fishing trips include all necessary safety equipment, bottled water and sodas, rod and reels, rain gear and professional, courteous guides.

A fishing license and trout stamp is needed which is available at the dock for an additional fee.



We cater to ladies, church groups and youth groups. Our guides always behave in a professional, courteous manner.

You never have to touch the fish or bait if you don't want to. We will help bait the hook, bring in the fish and even clean and bag them for you.

SHORE LUNCHES

\$30.00 + tax per boat
Fresh fried trout, fried potatoes, fresh salad, home baked bread and ranch beans.



BOAT & MOTOR

Full Day (12 hours): \$75.00 + tax
Half Day: \$45.00/hour + tax

Rentals chairs,
life jackets, net and paddle.

GUIDED BOAT RIDES
Very popular!

2 hours: \$30.00 per person + tax



A natural wonder. Each year in the springtime (Feb - mid June), a nesting pair of eagles raise babies on the bluffs. Beaver are also in the area and we've even seen a bear take a swim! Wildlife is abundant on the White River.


No group too big
or too small.

We can handle
them all!

**Contact us today to
book your fishing trip.**



FISCAL FOCUS

Budget and Tax Policy in  Perspective

April Holman
Senate Bill 100
Senate Committee on Assessment and Taxation
January 29, 2009

Good morning, Chairman Donovan and members of the Committee. On behalf of Kansas Action for Children (KAC) I would like to thank you for this opportunity to testify in opposition to SB 100.

KAC is a not-for-profit child advocacy organization that has been in existence since 1979. KAC promotes policies that aid family economic stability because instability creates stress and the potential for harm to children through less consistent medical care, fewer opportunities for early learning and the potential for lower performance in school.

Our opposition to Senate Bill 100 is not specific to guided and non-guided hunting services, but is instead a reflection of our general concern about the erosion of the sales tax base. The sales tax is a key source of revenue to the State General Fund (SGF), which is in turn a key source of funding for state government and for programs and services vital to children and families. The number of sales tax exemptions in Kansas has more than doubled in the past 15 years, resulting in a significant reduction in possible SGF revenues.

In fact, the budget shortfall that we face in Kansas is not entirely a function of a struggling economy. We know that our state's current tax structure is no longer keeping pace with public infrastructure costs. Although major components of the Kansas tax structure have been in place for quite some time, the strength of our tax policy has eroded little by little through legislative action each year. In the past four years alone, tax cuts including the elimination of the estate tax and the franchise tax and the passage of several sales tax exemptions has resulted in a State General Fund revenue reduction of almost \$150 million in this fiscal year alone. This cut in the tax base grows to \$180 million dollars in fiscal year 2010.

In light of the very serious budget gap that we face in Kansas this year and because further erosion of the sales tax base would only contribute to structural problems with the Kansas tax system, we urge your opposition of SB 100.



Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

Senate Tax Committee
Senate Bill No. 97

Testimony of
Sarah Byrne
Assistant Attorney General, Alcoholic Beverage Control

January 29, 2009

Good morning Mr. Chairman and members of the committee. I thank you for the opportunity to appear here today to present testimony in support of SB97.

The liquor drink tax act currently has a provision authorizing the director of ABC to impose a fine on, revoke, or suspend the license of any licensee who fails to timely file and pay its liquor drink taxes. SB97 would amend the liquor enforcement tax act to mirror that provision and establish clear authority for the director to fine, revoke, or suspend the license of any retailer who fails to timely file and pay its liquor enforcement tax.

The ABC proposes that the bill be amended to include farm wineries, microbreweries, and distributors as licensees upon whom the Director may order sanctions for failing to timely file and pay the liquor enforcement tax. Farm wineries and microbreweries must collect enforcement tax on sales made to the general public and distributors must collect enforcement tax on products sold directly to clubs and drinking establishments. Under the liquor enforcement tax act, all enforcement taxes collected are to be filed and paid by the 15th day of the subsequent month. The ABC proposes that SB97 be amended, as attached, to clarify the Director's authority to impose sanctions upon any licensee who fails to timely file and pay its liquor enforcement tax.

The ABC requests passage of SB97, amended as proposed, to clarify the Director's power, to create consistent enforcement throughout the industry, and to encourage compliance with the provisions of the liquor enforcement tax act.

Senate Tax Committee
Senate Bill No. 97

Testimony of
Sarah Byrne
Assistant Attorney General, Alcoholic Beverage Control

January 29, 2009

Attachment A
Proposed amendment to SB97

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

Section 1. (a) The director of taxation or the director of alcoholic beverage control may enjoin any person from engaging in business as a retailer, *farm winery, microbrewery, or distributor* when the retailer, *farm winery, microbrewery, or distributor* is in violation of any of the provisions of K.S.A. 79-4101 et seq., and amendments thereto, or any of the terms of this act, and shall be entitled in any proceeding brought for that purpose to have an order restraining the person from engaging in business as a retailer. No bond shall be required for any such restraining order or for any temporary or permanent injunction issued in that proceeding.

(b) If a ~~retailer~~ *any licensee* licensed by the director of alcoholic beverage control violates any of the provisions of K.S.A. 79-4101 et seq., and amendments thereto, or any of the terms of this act, the director of alcoholic beverage control may suspend or revoke the license of such ~~retailer~~ *licensee* in accordance with K.S.A. 41-320, and amendments thereto, or may impose a civil fine on the licensee in the manner provided by K.S.A. 41-328, and amendments thereto, or both.

(c) The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 79-4101 et seq., and amendments thereto.

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

Testimony to the Senate Committee on Assessment and Taxation

Richard Cram

January 29, 2009

Department Concerns with Senate Bill 100

Senator Donovan, Chair, and Members of the Committee:

Senate Bill 100 would reverse the Department's interpretation as stated in revised Notice 07-08 (attached) explaining the sales tax imposition in K.S.A. 79-3603(m) on the gross receipts derived from the participation in guided and non-guided hunts, and the gross receipts from the retail sale of game birds. If Senate Bill 100 is enacted, such charges will be exempt. Senate Bill 100 is similar to 2008 Senate Bill 487, which was not enacted last year. However, at the end of the 2008 Legislative Session, the Department issued Notice 08-02 (attached) imposing a one-year moratorium on enforcement of sales taxation on charges for guided and non-guided hunts, as well as the retail sale of game birds. That moratorium on enforcement will expire after May 6, 2009.

The Department of Wildlife and Parks reports that for 2006, the following number and types of hunting licenses were issued to non-residents:

644	non-resident combined hunting and fishing
57,944	non-resident hunting
9,986	controlled shooting area
593	48-hour water fowl
2,294	non-resident junior (under 16)

Fees and charges from participation in hunting—particularly from non-residents—is a growing business in Kansas. The sales tax imposition on charges for guided and non-guided hunting provides a way for Kansas to benefit and derive revenues from that tourism activity.

This proposed exemption will cause further erosion of the sales tax base at a time when this State can ill afford the loss of revenue. The Department's fiscal note is attached. This proposed exemption does not further any governmental function or decrease any burden on state or local government.

Our neighbor state, Missouri, does impose sales tax on fees for participation in hunting.

KANSAS DEPARTMENT OF REVENUE

February 4, 2008

Revised Notice 07-08

Sales Tax Treatment of Charges for Participation in Guided vs. Non-guided Hunting and Retail Sale of Game Birds

This notice sets forth the Department's guidance on the sales tax treatment of charges for guided and non-guided hunts, and on the retail sale of game birds. To the extent this guidance is inconsistent with prior statements or interpretations issued by the Department, this guidance shall control.

Charges for Participation in Guided vs. Non-guided Hunting

The gross receipts derived from the participation in guided and non-guided hunts, as well as sporting clays are subject to Kansas retailers' sales tax. Kansas law imposes tax on the gross receipts received from the sale of tangible personal property, enumerated services and certain admissions. K.S.A 79-3603(m) imposes sales tax on the gross receipts received from fees and charges by public and private clubs, drinking establishments, organizations and businesses for participation in sports, games and other recreational activities. K.A.R 92-19-22b(a)(1) defines "sports, games, and other recreational activities" as follows:

diversions that restore or refresh strength and spirits by means of pastime, exercise, or similar activities that involve strength, speed, dexterity, stamina, or training. These activities shall include golf, pool, billiards, skating, bowling, swimming, skiing, baseball, softball, basketball, volleyball, racquetball, handball, squash, tennis, carnival rides, motor sports, batting practice, skeet, trap, target shooting, horse riding, pinball, darts, electronic games, physical fitness services, and all other similar activities.

Hunting falls within the category of "sports, games, and other recreational activities," and any fees or other charges for participation in hunting, whether a guide is or is not included, are subject to Kansas sales tax.

The lease or rental of hunting rights to real property is considered a real property interest, and lease or rental payments made pursuant thereto are not subject to sales tax.

Retail Sale of Game Birds

The retail sale of game birds within Kansas is subject to Kansas retailers' sales tax (the seller should collect sales tax on the selling price). Kansas sales tax is also due on the sale of game birds when sold as pets, when sold directly to the consumer who will use them as a food source, and when the purchaser cannot produce a valid Kansas Exemption Certificate.

The seller is not required to collect Kansas sales tax on sale of game birds shipped or delivered by common carrier to point outside of the State of Kansas. The seller should retain for audit

purposes shipping documents, such as the bill of lading or invoice showing the shipping address indicating the out-of-state delivery.

If the buyer provides the seller with a Kansas Exemption Certificate indicating that the purchase of game birds is exempt for Kansas retailers' sales tax, then the seller is not required to collect sales tax. Some of the most common exemptions in the game bird industry are:

(1) Kansas Resale Exemption Certificate – This certificate indicates that the seller should not collect the sales tax because the buyer is going to resell the birds and collect sales tax. A prime example would be the purchase of birds by a sport hunting preserve. (See p. 43, Publication KS-1520).

(2) K.S.A. 79-3606(o) exempts all sales of fowl, the primary purpose of which is for use in the production of offspring or food production. A prime example would be the sale of birds to another producer who is going to use them to as breeding stock or, to a slaughter house that is going to process the birds for human consumption.

(3) Exempt Entity – No sales tax is due when birds are sold to an exempt entity such as a school, state of Kansas, federal government. Each of these exempt entities should have an Exemption Certificate issued to them similar to the one found on page 16 of Publication KS-1520.

May 7, 2008

Notice 08-02

**Sales Tax Treatment of Charges for Participation in Guided and Non-guided
Hunting and Retail Sale of Game Birds**

This notice is to advise that the Department is currently reviewing its interpretation on the sales tax treatment of charges for guided and non-guided hunts, and on the retail sale of game birds. Effective May 7, 2008 through May 6, 2009, the Department is suspending enforcement of collection of sales tax on charges for participation in guided or non-guided hunts, and on the retail sale of game birds.

In Revised Notice 07-08 dated February 4, 2008, the Department stated its interpretation that the gross receipts derived from the participation in guided and non-guided hunts are subject to Kansas retailers' sales tax, pursuant to K.S.A. 79-3603(m). During the 2008 Legislative Session, legislation was introduced that would exempt such gross receipts from sales tax. Although no such legislative was enacted, the Department is in the process of reviewing its interpretation. During such review and effective May 7, 2008 through May 6, 2009, subject to any legislative action taken during the 2009 Legislative Session, the Department will not enforce collection of sales tax on the gross receipts derived from the participation in guided and non-guided hunts, and on the retail sale of game birds. Any sales tax on such gross receipts already collected or remitted to the Department as of May 6, 2008 shall be deemed lawfully paid and shall not be refunded.

Taxable sales of meals, tangible personal property and lodging do not fall within the Department's forbearance on enforcement, and collection and remittance of applicable sales tax on those items should continue. Charges for participation in guided and non-guided hunts should be billed separately from charges for taxable sales of meals, tangible personal property, and lodging.

Questions concerning this notice may be directed to Policy & Research, telephone number 785-296-3081.

2009 Senate Bill 100a Fiscal Note

Introduced as a Senate Bill

Brief of Bill

Senate Bill 100, as Introduced, amends K.S.A 79-3603 (m) to exclude from taxation any fees and charges for participation in guided and non-guided hunts and fishing expeditions and excursions and hunting or fishing leases . It also amends K.S.A 79-3606 to add an exemption for sales of game birds the primary purpose of which is use in hunting.

The Act would be effective July 1, 2009.

Fiscal Impact

The loss of state sales tax revenue in fiscal year 2010 is estimated at \$500,000. Loss to the state general fund would be \$438,500 and \$61,500 to the highway fund. Local sales tax lost is estimated at \$125,000

The 2006 National Survey of Fishing, Hunting and Wildlife Associated Recreation as published by the U.S. Fish & Wildlife Service provides expenditure data on hunting and fishing in Kansas. Total expenditures for hunting were \$245.4 M and \$245.3 M for fishing, which includes food and lodging, transportation, equipment, auxiliary, other trip costs and other items costs. The "other trip" expenditures amounted to \$10 million for hunting and \$32.4 million for fishing and of that, the amounts expended on guide fees, pack trip or package fees make up 94% (\$9.4 M) for hunting and 10% (3.2 M) for fishing. The loss of state sales tax from these fees and charges would be \$668,000 annually. However, the department has issued a notice stating that the leasing of hunting and fishing rights on private property by individuals are not subject to sales tax, which will lower the fiscal note by one-third. Exempting the sales of game bird sales is estimated to result in the additional loss of \$50,000, making the total fiscal note for fiscal year 2010 at \$500,000

Estimate sales tax reductions are provided below.

Fiscal Year	Total	SGF	Hwy	Local
2010	\$500,000	\$438,500	\$61,500	\$125,000
2011	\$512,500	\$449,463	\$63,038	\$128,125
2012	\$525,313	\$460,699	\$64,613	\$131,328
2013	\$538,445	\$472,217	\$66,229	\$134,611
2014	\$551,906	\$484,022	\$67,884	\$137,977

Administrative Impact

Sales tax publications would require revision at a cost of \$26,900.

Administrative Problems and Comments

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9-4