

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:08 a.m. on March 18, 2010, in Room 783 of the Docking State Office Building.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes
Scott Wells, Office of the Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Brandon Riffel, Kansas Legislative Research Department
Marla Morris, Committee Assistant

Conferees appearing before the Committee:

Representative Arlen Siegfried,
Richard Cram, Kansas Department of Revenue

Others attending:

See attached list.

Introduction of Bills: None

Chairman Carlson opened the hearing on:

HB 2687 - Penalties and interest on overpayments of income taxes paid by taxpayers

Staff Chris Courtwright, Kansas Legislative Research Department, briefed the Committee on **HB 2687**.

Representative Siegfried, introduced the bill at the request of his constituents and spoke in favor of **HB 2687**. KSA 79-3228 states that if a taxpayer fails to pay their taxes, an additional tax shall be levied at 1.0 percent a month up to 24 percent plus interest. **HB 2687** provides citizens the same level of fairness and justification given the state. The bill allows for returns paid in a timely fashion, with interest and penalty for late return payments from the state (Attachment 1). He stated his intent was not to put an additional burden on the Department of Revenue. He stood for questions.

Richard Cram, Kansas Department of Revenue, testified in opposition to **HB 2687**. Under current law, no interest is due on return until 60 days have passed. Interest does not begin April 15. **HB 2687** allows penalties to accrue before any interest is due. Mr. Cram briefed the Committee on the added cost of programming the system to meet demands of this bill (Attachment 2).

Chairman Carlson closed the hearing on **HB 2687**.

Discussion and action on:

HB 2740 - Amnesty from assessment or payment of penalties and interest with respect to certain taxes

Representative Kleeb moved **HB 2740** favorably for passage. The motion was seconded by Representative Powell.

Representative Kleeb moved to amend **HB 2740** to change the date on line 26 of page 2 of the bill from July 1, 2010 to September 1, 2010 and to insert *or executed a payment plan that will collect any amount due by July 30, 2011* in line 30 after the words tax due (Attachment 3), and granting the Revisor Self the authority to word the amendment to accurately reflect the intention of Representatives Kleeb and Powell and make additional technical amendments throughout the bill related to such amendment. The motion was seconded by Representative Powell. The motion to amend carried.

Representative King made a substitute motion to make the amended **HB2740** a House Substitute Bill for **SB 427**. The motion was seconded by Representative George. The motion carried.

CONTINUATION SHEET

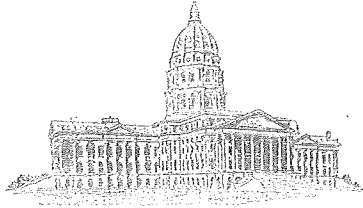
Minutes of the House Taxation Committee at 9:00 a.m. on March 18, 2010, in Room 783 of the Docking State Office Building.

Representative Menghini moved a conceptual amendment that provides that this bill is enacted only upon appropriation of the additional \$900,000 needed to hire 45 temporary employees to implement the bill. Representative Frownfelter seconded the motion. The motion failed.

Representative Kleeb moved to pass out favorably as amended, **House Substitute for SB 427**. Representative Goico seconded the motion. The motion carried.

The next meeting is scheduled for March 19, 2010.

The meeting was adjourned at 10:35 a.m.



ARLEN H. SIEGFREID
SPEAKER PRO TEM

March 18, 2010

House Bill 2687
House Taxation Committee

Mr. Chairman and members of the committee,

I appreciate your time and consideration today as I come before you in support of HB 2687. At the direct request of my constituents, I've drafted this legislation to ensure that responsible citizens suffering from the same economic hardships we're confronting as legislators are treated fairly, and equally.

In Kansas we expect our citizens to pay their taxes. We expect them to complete them correctly, and we expect them to do so on time. Citizens have the right to some basic expectations as well.

KSA 79-3228 clearly states that if a taxpayer fails to pay, an additional tax shall be levied at 1% a month up to 24% plus interest. I view these rules and rates to be fair and justified. However, Kansans deserve the same level of fairness and justification from the state. House Bill 2687 ensures this. Under these provisions, if the state fails to issue returns in a timely fashion, it will pay those affected the same penalty fees and interest rates prescribed by KSA 79-2968.

Government must work for the people. They entrust us with great responsibility to govern, and we have a very basic obligation to maintain that trust. I've grown increasingly concerned with the frequent use of this action, and agree with my constituents that we owe fair compensation for instances in which we utilize their tax dollars.

As families continue to struggle, the state must do everything in our power to support them. Withholding their returns without fair compensation clearly does the opposite. This money does not belong to us. If the state determines we absolutely must "loan" ourselves money—we must also provide fair compensation to our financiers, the citizens of Kansas.

This is a simple step in a complex process to begin restoring public trust. I urge you to take a step in the right direction by supporting HB 2687.

House Taxation

Date: 3-18-10

Attachment: 1

House Taxation Committee

Richard Cram

March 18, 2010

Department Concerns with House Bill 2687

Representative Carlson, Chair, and Members of the Committee:

House Bill 2687, as introduced, would amend K.S.A. 2009 Supp. 79-3228 to add a 1% per month penalty not to exceed 24% of the refund amount, plus interest, for each month during which a refund has not been refunded, from the date the refund was due under law (generally April 15) until paid to the taxpayer, effective for tax years beginning after December 31, 2009. For taxpayers waiting to file their returns until the filing due date, penalties on any refund due would begin accruing immediately.

Under current law, interest does not begin to accrue on a refund until 2 months after the filing due date for the return, or 2 months after the return was filed, whichever date is later. K.S.A. 2009 Supp. 79-32,105(e)(7). Under House Bill 2687, penalties will begin to accrue even before any interest on the actual refund is due.

The negative fiscal impact from this proposal is substantial: \$2.55 million in FY 2011 and \$11.6 million in FY 2012. Administrative costs are estimated at \$1,032,000 in FY 2011. Our fiscal note is attached.

The Department strives to process refund claims in a timely manner. For taxpayers filing electronically, refunds are processed and sent out in an average of 3 to 5 days from the filing date of the return. However, in situations such as what occurred at the end of Fiscal Year 2009, refunds had to be delayed for a few weeks, due to an overall cash flow problem of the State. There is no guarantee that such a cash flow problem will not occur in the future. If it does, then such a cash flow problem will be compounded by this bill.

MEMORANDUM

To: Mr. Duane Goossen, Director
Division of Budget

From: Kansas Department of Revenue

Date: 02/26/2010

Subject: House Bill 2687
Introduced as a House Bill

Brief of Bill

House Bill 2687, as introduced, amends KSA 79-3228 to add 1% per month not to exceed 24%, plus interest, for each month during which a refund has not been refunded, from the date the refund was due under law until paid to the taxpayer.

The effective date of this bill is on publication in the statute book for tax years beginning after December 31, 2009.

Fiscal Impact

Passage of this bill would reduce state general fund receipts in Fiscal Year 2011 by about \$2.55 million and by \$11.6 million in Fiscal Year 2012.

This bill requires the addition of 1% plus interest to refunds paid from the date the refund was due, April 15th. In calendar year 2009, about \$210 million in refunds were paid after the April 15th due date. Adding the 1% and interest to the refund amounts paid from April 16, 2009 through December 31, 2009, would have cost an additional \$11.6 million in penalty and interest paid to taxpayers claiming refunds. Using calendar year 2009 refund amounts, the impact to fiscal year 2011 would be about \$2.55 million in additional penalty and interest on refund payments and in fiscal year 2012 about \$11.6 million would be paid in additional penalty and interest on refunds.

Administrative Impact

The estimated costs necessary to implement this bill are \$1,032,000 in fiscal year 2011.

Those costs include about \$489,600, or 5,440 hours, of contract APA programming time.

Approximately 8 FTE's and 5 temporary positions will be needed in order to process returns and work refunds in a timely manner in order to reduce the amount of refund penalty. Annual salary

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costs for 5 temporary administrative assistants, 3 CR specialists, and 5 CR seniors is about \$433,471 in fiscal year 2011. Annual operating expenses for the 8 FTE positions is about \$6,360. One time costs for workstations is about \$35,440.

The estimated user testing resources necessary to implement the bill are \$67,280, or 2,320 hours, for testing the new programs.

Administrative Problems and Comments

Taxpayer/Customer Impact

Legal Impact

Approved By:

A handwritten signature in black ink that reads "Joan Wagnon". The signature is written in a cursive, flowing style.

Joan Wagnon
Secretary of Revenue

1 after July 1, 2010, any one of the following circumstances exist: (A) The
 2 taxpayer has received notice of the commencement of an audit; (B) an
 3 audit is in progress; (C) the taxpayer has received notice of an assessment
 4 pursuant to K.S.A. 79-2971 or 79-3643, and amendments thereto; (D) as
 5 a result of an audit, the taxpayer has received notice of a proposed or
 6 estimated assessment or notice of an assessment; (E) the time to admin-
 7 istratively appeal an issued assessment has not yet expired; or (F) an
 8 assessment resulting from an audit, or any portion of such assessment, is
 9 pending in the administrative appeals process before the secretary or
 10 secretary's designee pursuant to K.S.A. 79-3226 or 79-3610, and amend-
 11 ments thereto, or the state court of tax appeals, or is pending in the
 12 judicial review process before any state or federal district or appellate
 13 court. Amnesty shall not apply to any matter that is the subject of an
 14 assessment, or any portion of an assessment, which has been affirmed by
 15 a reviewing state or federal district or appellate court. Amnesty shall not
 16 apply to any party to any criminal investigation or to any civil or criminal
 17 litigation that is pending in any court of the United States or this state
 18 for nonpayment, delinquency or fraud in relation to any tax imposed by
 19 the state of Kansas.

20 (b) Upon written application by the taxpayer, on forms prescribed by
 21 the secretary of revenue, and upon compliance with the provisions of this
 22 section, the department of revenue shall not seek to collect any penalty
 23 or interest which may be applicable with respect to taxes eligible for
 24 amnesty.

25 (c) Amnesty for penalties and interest shall be granted only to those
 26 eligible taxpayers who, within the amnesty period of ~~July 1, 2010, to De-~~
 27 ~~December 31, 2010,~~ and in accordance with rules and regulations established
 28 by the secretary of revenue, have properly filed a tax return for each
 29 taxable period for which amnesty is requested, paid the entire balance of
 30 tax due and obtained approval of such amnesty by the department of
 31 revenue.

32 (d) If a taxpayer elects to participate in the amnesty program estab-
 33 lished pursuant to this section as evidenced by full payment of the tax
 34 due as established by the secretary of revenue, that election shall consti-
 35 tute an express and absolute relinquishment of all administrative and ju-
 36 dicial rights of appeal with respect to such tax liability. No tax payment
 37 received pursuant to this section shall be eligible for refund or credit. No
 38 payment of penalties or interest made prior to July 1, 2010, shall be
 39 eligible for amnesty.

40 (e) For tax returns for which amnesty has been requested, nothing
 41 in this section shall be interpreted to prohibit the department from ad-
 42 justing such tax return as a result of a federal, department or other state
 43 agency audit.

September 1, 2010

*or executed a
 payment plan
 that will collect
 any amount due
 by June 30, 2011.*