

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 14, 2010, in Room 152-S of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the Committee:

Others attending:

See attached list.

Sen. Donovan welcomed everyone to the first meeting of the 2010 session.

Mike Taylor representing the unified governments of Wyandotte County spoke to the committee about two bills he would like the committee to sponsor. The first bill would allow local governments to securitize delinquent tax debt owed them. The second bill would allow units of government which are using collection companies to collect delinquent taxes to add that cost to the total tax amount due. Chairman Donovan asked if there were a motion to introduce these two bills. Sen. Lynn moved the committee sponsor the bills. Sen. Steineger seconded the motion. Motion carried. Mr. Taylor gave material to Scott Wells and Gordon Self from the Office of Revisor of Statutes as a guide to drafting the bills.

Joan Wagon, Secretary of Revenue, spoke to the committee on behalf of three separate groups. She introduced several proposals that the Kansas Advisory Council of Intergovernmental Relations requests. The first was for a moratorium on any new property tax exemptions, sales tax exemptions, and income tax credits, as well as any new incentive program that permits the utilization of an employers withholding tax as an incentive to economic development for tax years 2010, 2011, and 2012. Sen. Steineger moved the request for a joint resolution. Sen. Brownlee seconded the motion. The motion carried.

The council also requested a bill that would eliminate certain sales tax exemptions: all exemptions granted "by name" to a specific organization; tax all admissions to recreation activities or events, whether operated by a non-profit organization, city, county, or private organization; reestablish the policy that was set by the Hodge Commission, that all non-profit and religious organizations pay sales tax on their purchases; repeal miscellaneous consumer exemptions, such as lottery tickets, bingo, and coin-operated laundries; clarify the original construction labor "exemption" statute to remove "repair" and tax separately, certain listed "repairs" to personal property in residences; clarify 79-3603(q) so taxable "maintenance" services include janitorial cleaning services for commercial property; repeal state tax exemptions on residential utilities and the local exemption on water for residential utilities and the local exemption on water for residential use (This would make up about \$146 million of increased tax revenue.); and exempt certain fund-raising events of non-profit organizations and require all existing exemptions to come into compliance with this policy by 2012. Chairman called for a motion on this request. Sen. Steineger moved the bill be drafted.. Sen. Holland seconded the motion. The motion failed.

The third request was for a bill prohibiting the transfer of any tax credits and repealing the following tax credits: Assistive Technology Contribution credit; plugging an abandoned oil or gas well credit; Swine facility improvement credit; temporary assistance to families contribution credit; individual development account credit; and law enforcement training center credit. Chairman Donovan asked for a motion on this request. Sen. Steineger moved the bill be drafted. Sen. Holland seconded the motion. Motion passed. (Attachment 1)

Next, Secretary Wagon spoke to Governor Parkinson's tax proposals. First to increase the state sales tax rate from 5.3% to 6.3% for three years effective July 1, 2010 and reducing it to 5.5% effective July 1, 2013. Also

CONTINUATION SHEET

Minutes of the Senate Assessment and Taxation Committee at 10:30 a.m. on January 14, 2010, in Room 152-S of the Capitol.

to increase cigarette tax rate from \$.79 per 20 cigarette pack to \$1.34 per pack effective July 1, 2010, and making appropriate changes to the inventory tax. Also amending the definition of "cigarettes" to subject "little cigars" and cigarettes wrapped in non-paper wrappers to tax them as cigarettes. The committee was asked to introduce a bill to cover the Governor's request. Sen. Huntington moved the two sections of this bill be considered separately. Sen. Holland seconded the motion. Motion failed. (Attachment 2)

Sen. Derek Schmidt spoke to the request of the Governor.

Lastly, Secretary Wagon requested introduction of the Department of Revenue's legislative proposals. The first would provide statutory authority to the Secretary of Revenue to require all taxpayers for all tax types administered by the Department to file returns electronically. This would include all income tax, homesteaded refunds, employer withholding, and sales/use tax returns. It would ask a fee of \$25 for paper income tax returns, and a \$5 service fee to taxpayers who file paper sales or use tax returns. There would also be a fee for taxpayers who require refunds sent by paper check rather than receive refunds electronically. This would reduce processing costs in opening mail and handling paper checks. Also included in the request, the Department recommends that tax credit claims below \$5 be disallowed. Lastly, people filing Intangibles Tax Returns would file that return directly with the county clerk of the appropriate county.

The second request is that a correction to the 10% Tax Credit Reduction Provision in 2009 HB 2365 for tax years 2010 and 2011. The statutory language is flawed and without correction \$500,000 to \$1 million of the projected revenue enhancement in the bill will be potentially be lost.

Third, the Revenue Department requests the imposition of an administrative fee of \$10 when a taxpayer with delinquent tax liability applies to the Department Compliance and Enforcement Staff to enter into an installment plan to pay off the delinquent tax liability. The fee would go into the Recovery Fund for Enforcement Actions and Attorney Fees to offset the Department of Revenue's compliance/enforcement costs.

The Department's fourth request is a bill to adopt the federal definition of "willfulness" for sales tax and withholding tax. This would mean a person responsible for remitting sales tax or employer withholding tax on behalf of a business can be held personally liable for that tax if the person is found to have "willfully" failed to collect and remit the tax.

The fifth part of this request involves the Streamlined Sales Tax Conformity Requirements were recently amended to require retailers to be given 30 days notice of the rate change. If this is not done, retailers are held harmless for failing to collect the correct rate for 30 days after the enactment of the new rate. Secretary Wagon asked that K.S.A. 79-3666 be amended to conform to this requirement.

The sixth legislative proposal requested by the department is imposition of a cigarette tax on internet purchasers. To do this there needs to be modernization of the Cigarette/Tobacco Products Tax statutes.

Amendments to the Liquor Control Act are the seventh request: to include a permit allowing import, storage, packaging, and export of alcoholic liquor and cereal malt beverage and amending K.S.A. 41-501. Also reintroduction of the last version of provisions of 2009 SB 97.

Lastly, Secretary Wagon requested updating Motor Carrier Valuation and Assessment Statues. (Attachment 3)

Chairman Donovan asked for a motion on the last group of bills requested. Sen. Brownlee moved the last group of requested bills be considered for bills. Sen. Steineger seconded the motion. Motion carried.

Sen. D. Schmidt spoke to the committee about a bill needed in Chautauqua county allowing a sales tax to fund construction of a new jail for the area.

The next meeting is scheduled for January 20, 2010.

The meeting was adjourned at 11:53 a.m.

SENATE
Assessment & Taxation Committee
GUEST LIST

DATE: 1/14/10

NAME	REPRESENTING
Whitney Jamron	YMCA'S of KS
Matt Hickam	KC P&L
Matthew Joseph	KMH
Michelle Pittler	Cap. Strategics
Larry R Baer	LKM
Ligh Keck	Heinlaw firm
Natalie Bufin	KSCPA'S
Mark Desetti	KN EN



Kansas Advisory Council on Intergovernmental Relations

Joan Wagnon, Chairperson

Mark Parkinson, Governor

Senate Committee on Assessment and Taxation

January 14, 2010

Joan Wagnon

Request for Introduction of KACIR 2010 Legislative Proposals

Senator Donovan, Chair, and Members of the Committee:

Below are summaries of legislative proposals that the Kansas Advisory Council on Intergovernmental Affairs respectfully requests for introduction as Committee bills or resolutions:

I. Joint Concurrent Resolution for Moratorium on New Property Tax, Sales Tax Exemptions, Income Tax Credits, and Withholding Tax Incentive Programs.

Joint concurrent resolution for a moratorium on any new property tax exemptions, sales tax exemptions, and income tax credits, as well as any new incentive program that permits the utilization of an employer's withholding tax as an incentive to economic development, for the tax years 2010, 2011, and 2012.

II. Bill eliminating Certain Sales Tax Exemptions.

Repeal of certain exemptions is described below. The total fiscal note for FY2011 is \$196.14 million, including the consumer utility exemption. This list was compiled by using the following policy choices:

- Repeal all exemptions granted "by name" to a specific organization, listed below:

	Public Policy: Exemptions to Charitable Organizations by Name	FY 2010 (\$ in millions)	FY 2011 (\$ in millions)
3606 (vv)	Property purchased by the following organizations who are organized under the federal income taxation code as a 501 (c)(3): American Heart Association, Kansas Affiliate; Kansas Alliance for the Mentally Ill, Inc.; Kansas Mental Illness Awareness Council; in 2004 added: Heartstrings Community Foundation, Cystic Fibrosis . Spina Bifida Assn, CHWC, Inc., Cross-lines Cooperative Council, Dreams Work, Inc., KSDS, Inc., Lyme Association of Grater Kansas City, Inc Dream Factory, Ottawa Suzuki Strings, International Assn of Lions Clubs, Johnson County young Matrons, American Cancer Society, Community Services of Shawnee, Angel Babies Assn, Kansas Fairground Foundation.	\$ 0.82	\$ 0.85

3606 (ww)	Property purchased by the Habitat for Humanity for use within a housing project	\$ 0.12	\$ 0.12
3606 (ggg)	Property and services purchased by or on behalf of the Kansas Academy of Science.	Minimal	Minimal
3606 (kkk)	Not Used	\$ -	\$ -
3606 (lll)	Property and services purchased by Special Olympics Kansas, Inc., and sales made by or on behalf of Special Olympics.	\$ 0.03	\$ 0.03
3606 (mmm)	Property and services purchased by Marillac Center, Inc. and sales made by or on behalf of the Marillac Center.	\$ 0.06	\$ 0.06
3606 (nnn)	Property and services purchased by West Sedgwick County - Sunrise Rotary Club for constructing boundless playground.	\$ 0.02	\$ 0.02
3606 (qqq)	Property and services purchased by TLC for Children and Families, Inc. and sales made by or on behalf of TLC	\$ 0.18	\$ 0.18
3606 (sss)	Property and services purchased by catholic charities or youthville and sales made by or on behalf of catholic charities or youthville	\$ 0.67	\$ 0.69
3606 (uuu)	Property and services purchased by Kansas Children's Service League and sales made by or on behalf of the KCSL	\$ 0.16	\$ 0.16
3606 (vvv)	Property and services purchased by Jazz in the Woods and sales made by or on behalf of such organization	\$ 0.01	\$ 0.01
3606 (www)	Property purchased by or behalf of Frontenac Education Foundation and sales made by or on behalf of such organization	Minimal	Minimal
3606 (xxx)	Property and services purchased by the Booth Theatre Foundation, Inc. Provides for refund of sales taxes paid from January to July '07.	\$ 0.03	\$ 0.03
3606 (yyy)	Property and services purchased by the TLC Charities Foundation, Inc. and sales made by or on behalf of these organizations.	Minimal	Minimal
3606 (zzz)	Property purchased by Rotary Club of Shawnee Foundation	Minimal	Minimal
3606 (aaaa)	Property and services purchased by or on behalf of Victory in the Valley and sales made by or on behalf of such organization	\$ 0.02	\$ 0.02
3606 (bbbb)	Guadalupe Health Foundation, sales of entry or participation fees, charges or tickets for annual fundraising event	\$ 0.11	\$ 0.12
3606 (cccc)	Property and services purchased by or on behalf of Wayside Waifs for the purpose of providing such organizations annual fundraising event and sales made by or on behalf of such organization	\$ 0.01	\$ 0.01
3606 (dddd)	Property or services purchased by or on behalf of Goodwill Industries or Easter Seals of Kansas, Inc for the purpose of providing education, training and employment opportunities for people with disabilities and other barriers to employment	\$ 0.04	\$ 0.04
3606 (eeee)	Property or services purchased by or on behalf of All Beef Battalion, Inc. for the purpose of educating, promoting and participating as a contract group through the beef cattle industry in order to carry out such projects that provide support and morale to members of the United States armed forces and military services.	\$ 0.00	\$ 0.00
3606 (ffff)	Property and services purchased by Sheltered Living, Inc for the purpose of providing residential and services for people with developmental disabilities or mental retardation, or both; and sales made on behalf of such organization	\$ 0.03	\$ 0.03
	Subtotal	\$ 2.30	\$ 2.38

- **Tax all admissions to recreation activities or events, whether operated by a non-profit organization, city, county or private organization:**

	Public Policy: Exemption of Services	FY 2010 (\$ in millions)	FY 2011 (\$ in millions)
3603 (m)	Fees and charges by any political subdivision, youth recreation organization exclusively providing services to persons 18 or younger organized as a 501(c)(3) for sports, games and other recreational activities and entry fees and charges for participation.	\$ 0.94	\$ 0.97
3603 (n)	Dues charged by any organization pursuant to paragraph 8 and 9 of 79-201 (veteran & humanitarian organizations) and sales of memberships to nonprofit zoos	\$ 0.34	\$ 0.36
	Subtotal	\$ 1.28	\$ 1.33

- Reestablish the policy that was set by the Hodge Commission¹ that all non-profit and religious organizations pay sales tax on their purchases, so revoke the following exemptions:

	Public Policy: Religious Exemption	FY 2010 (\$ in millions)	FY 2011 (\$ in millions)
3606 (aaa)	Property and services purchased by religious organizations and used exclusively for religious purposes	\$ 17.96	\$ 18.59
	Public Policy: Charitable, Religious, Benevolent Exemptions		
3603 (e)	Admission to any cultural and historical event which occurs triennially	Minimal	Minimal
3606 (v)	Sales of food products purchased by contractor for use in preparing meals for delivery to homebound elderly persons. In 2004, expanded exemption to all personal property purchased by contractor and sales of food products by or on behalf of contractor or organization	\$ 0.86	\$ 0.89
3606 (ii)	Property purchased by nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities and sales of property by or on behalf of such organization	\$ 2.72	\$ 2.81
3606 (oo)	Property purchased by a community action group or agency to repair or weatherize housing occupied by low income individuals.	Minimal	Minimal
3606 (qq)	Property and services purchased by a nonprofit museum or historical society which is organized under the federal income taxation code as a 501 (c)(3)	\$ 0.41	\$ 0.42
3606 (rr)	Property which will admit purchases to an annual event sponsored by a nonprofit organization organized under the federal income taxation code as a 501 (c)(3)	\$ 0.03	\$ 0.04
3606 (tt)	Property and services purchased by not-for-profit corporation for the sole purpose of constructing a Kansas Korean War memorial and is organized under the federal income taxation code as a 501 (c)(3)	\$ -	\$ -
3606 (xx)	Property and services purchases by nonprofit zoo or on behalf of a zoo by an entity that is a 501(c)(3)	\$ 0.62	\$ 0.65
3606 (yy)	Property and services purchased by a parent-teach association or organizations and all sales of tangible personal property by or on behalf of such association	\$ 0.59	\$ 0.61
3606 (bbb)	Sales of food for human consumption by organizations exempt by 501(c) (3) pursuant to food distribution programs which offer such food at a price below cost in exchange for the performance of community service by the purchaser.	Minimal	Minimal
3606 (hhh)	Property and services purchased by or on behalf of Domestic Violence Shelters as members of the Kansas coalition against Sexual and Domestic Violence	\$ 0.06	\$ 0.06
3606 (iii)	Property and services purchased by organizations distributing food without charge to other nonprofit food distribution programs. Includes taxes paid on and after July 1, 2005 and prior to July 1, 2006.	\$ 0.25	\$ 0.25
3606 (ppp)	Property and services purchased by non-profit Homeless Shelters, and sales made by or on behalf of these organizations.	\$ 0.11	\$ 0.11
3606 (ttt)	Property and services purchased a contractor for a purpose of restoring, constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling a home or facility owned by a nonprofit museum which is a qualified under the governor hometown heritage act (KSA 75-5071)	\$ 0.11	\$ 0.11
	Subtotal	\$ 23.72	\$25.54

- Repeal miscellaneous consumer exemptions, such as lottery tickets, bingo, and coin-operated laundries:

	Public Policy: Miscellaneous Exemptions	FY 2010 (\$ in millions)	FY 2011 (\$ in millions)
3602 (ii)	Modified definition of sales or selling price to not include cash rebates granted by a manufacturer to a purchaser or lessee of a new motor vehicle if paid directly to the retailer as a result of the original sale. The exemption is granted from July 1, 2006 and ending June 30, 2009.	\$ -	\$ -

3603 (b)	Taxes telephone and telegraph services except certain interstate and international services and value-added nonvoice data services	\$ 1.50	\$ 1.55
3606 (f)	Coin operated Laundry Services	\$.38	\$.39
3603 (o)	Motor vehicles exchanged for corporate stock, corporate transfer to itself and immediate family member sales.	\$ 0.22	\$ 0.22
3603 (v)	Sales of bingo cards, bingo faces and instant bingo tickets. Tax rate 2.5 on July 1, 2001 to June 30, 2002; exempt on July 1, 2002	\$ 2.83	\$ 2.93
3606 (x)	Sales of propane, gas, L.P-gas, coal, wood, and other fuel sources for the production of heat or lighting for noncommercial use in a residential premise. Effective Jan 1 2006, exemption for residential and agricultural moved hereto 3603(c).	\$ -	\$ -
3606 (ee)	Lottery tickets and shares made as part of a lottery operated by the State of Kansas	\$ 14.61	\$ 15.12
3606 (ooo)	Sales made by or on behalf of a public library	\$ 0.01	\$ 0.01
3606 (rrr)	Sales made by or on behalf of a county law library	\$.11	\$.12
	Subtotal	\$19.66	\$20.34

- Clarify the original construction labor “exemption” statute to remove “repair” and tax separately certain listed “repairs” to personal property in residences. (Currently these services are taxed if they include the alteration or repair of tangible personal property.) There are problems distinguishing taxable from non-taxable labor services in the repair area from original construction for residences. The change will rewrite those statutes for clarity and ensure that all the labor services for repair of certain household appliances and other property in residences are taxed, with or without the application of tangible personal property.

	Public Policy: Consumer Exemption	FY 2010 (\$ in millions)	FY 2011 (\$ in millions)
3603 (p)	Amend to remove the exemption on labor services for residential repair work.	\$ 3.0	\$ 3.1

- Clarify 79-3603(q) so that taxable “maintenance” services include janitorial cleaning services for commercial property. Under current law, washing a floor is not taxed, but waxing a floor (applying tangible personal property) is taxed. The proposal would make clear that washing a commercial property floor is also taxable.
- Repeal the state tax exemption on residential utilities and the local exemption on water for residential use (K.S.A. 12-189a(a)):

	Public Policy: Consumer Exemption	FY 2010 (\$ in millions)	FY 2011 (\$ in millions)
3603 (c)	Electricity, gas and heat utilities exemption for residential use. Exemption is limited to state sales tax only.	\$ 128.28	\$ 137.77
3606 (w)	Water exemption for residential use.	\$12.0	\$12.42
	Subtotal	\$140.28	\$146.19

Exempt certain fund-raising events of non-profit organizations and require all existing exemptions to come into compliance with this policy by 2012. It is estimated a fund-raising exemption, limited to certain types of activities, would reduce state sales tax revenues by \$10 million in fiscal year 2012.

III. Bill prohibiting the transfer of any tax credits and repealing the following tax credits:

Statutory Reference	Description	Beg Date	End Date
K.S.A. 65-7101	Assistive Technology Contribution credit	2003	none
K.S.A. 79-32,207	Plugging an abandoned oil or gas well credit	1998	none
K.S.A. 79-32,204	Swine facility improvement credit	1998	none
K.S.A. 79-32,200	Temporary assistance to families contribution credit	1994	none
K.S.A. 74-50,208	Individual Development Acct credit	2005	none
K.S.A. 79-32,242	Law Enf Training Center credit	2006	none

¹The Joint Committee on the State Tax Structure, otherwise know as the Hodge Commission, was created in 1968 “to make studies, and provide reports with recommendations thereon to the legislature, concerning the various taxes of the state and their relationship to each other and to the economy and public interest.”

Senate Committee on Assessment and Taxation

Joan Wagnon

January 14, 2010

Request for Introduction of the Governor's Tax Proposals

Senator Donovan, Chair, and Members of the Committee:

On behalf of Governor Mark Parkinson, I respectfully request for introduction in this Committee a bill providing for the following:

Sales Tax

Increase the state sales tax rate in K.S.A. 79-3603 from 5.3% to 6.3% for 3 years, effective July 1, 2010, reducing the rate back to 5.5% effective July 1, 2013, with .2% of such sales tax rate dedicated to the State Highway Fund from that date thereafter.

Cigarette Tax and Tobacco Products Tax

Increase the cigarette tax rate in K.S.A. 79-3310 from \$.79 per 20-cigarette pack to \$1.34 per 20-cigarette pack, effective July 1, 2010, and make appropriate changes to the inventory tax. Increase the tobacco products tax rate in K.S.A. 79-3371 from 10% to 40% of the wholesale price, and impose an accompanying inventory tax. Amend the definition of "cigarettes" to subject "little cigars" and cigarettes wrapped in non-paper wrappers to tax them as cigarettes, instead of as tobacco products under current law.

Senate Committee on Assessment and Taxation

Joan Wagnon

January 14, 2010

Request for Introduction of Department Legislative Proposals

Senator Donovan, Chair, and Members of the Committee:

Provided below is a summary of the Department's legislative proposals, which are respectfully requested for introduction in this Committee as Committee Bills:

E-file/E-pay Initiative

Provide statutory authority to the Secretary of Revenue to require all taxpayers for all tax types administered by the Department to file returns electronically. We would exercise this authority immediately to require electronic filing of all income tax, homestead refunds, employer withholding, and sales/use tax returns. As our electronic filing systems for the other tax types are developed over time, we would phase in electronic filing requirements for those tax types. This proposal would put in place the statutory authority for the Secretary to use as those tax types come on line for electronic filing.

Add a \$25 service fee when a taxpayer files a paper income tax return, and a \$5 service fee when a taxpayer files a paper sales or use tax return instead of filing electronically, when the return is eligible to be filed electronically. This will strongly encourage taxpayers to file electronically, which will significantly reduce staffing needs to process paper returns. The fees collected will help to offset the Department's manpower costs to manually process paper returns.

For taxpayers who file returns electronically, require direct deposit of refunds or charge \$10 fee for income tax refunds and \$5 for sales tax refunds sent by paper check. This will encourage taxpayers to receive refunds electronically and will save the expense of producing and sending paper checks and dealing with undelivered checks returned in the mail.

Reduce the threshold in K.S.A. 75-5151 for requiring payment of taxes by Electronic Fund Transfer from \$45,000 in total calendar year tax liability down to \$25,000. This will greatly speed receipt of tax revenues and will significantly reduce processing costs in opening mail and handling paper checks.

Allow Tax Credits Only for Minimum of \$5

Under current law, the Department does not assess income tax liability if the amount due is less than \$5. Likewise, the Department does not refund income taxes if the amount due for refund to the taxpayer is less than \$5 dollars. The proposal would provide that a tax credit claim of less than \$5 will not be allowed. Each type of tax credit has its own credit schedule, which the taxpayer must complete and file with the return. The schedule provides the information needed to establish that the taxpayer is entitled to the particular tax credit. There administrative costs involved with processing credit schedules. For tax credit claims below \$5, the administrative costs of processing the credit schedules for those amounts can exceed the amount of the tax credit. For this reason, the Department is recommending that tax credit claims below \$5 be disallowed.

Remove Requirement For Filing Intangibles Tax Return with KDOR

Only certain counties impose the intangibles tax, which is billed by the county clerk along with personal property tax. K.S.A. 12-1,104 requires taxpayers to file their intangibles tax returns with the Department along with their income tax returns. The Department then collects the intangible tax returns and sends them to the appropriate county clerk, and those returns are used to bill the intangibles tax levied by the county. Under this proposal, taxpayers would no longer file their intangibles tax returns with the Department. They would file the return directly with the county. This eliminates one step of return processing and facilitates the Department's effort to move taxpayers to electronic filing.

Correction to 10% Tax Credit Reduction Provisions in 2009 HB 2365

The 2009 legislature imposed a 10% reduction on most tax credits in House Bill 2365 for tax years 2010 and 2011. However, the statutory language imposing the 10% "haircut" is flawed with regard to the following refundable tax credits: historic site contribution credit, K.S.A. 79-32,211; declared disaster capital investment credit, K.S.A. 79-32,262; regional foundation credit, K.S.A. 74-50,154; small employer health benefit credit, K.S.A. 40-2246; and deferred maintenance credit, K.S.A. 79-32,261. Under the flawed language, these tax credits would largely avoid the 10% haircut. Under this proposal, corrective language would be inserted to ensure that these tax credits are subject to the full 10% haircut for tax years 2009 and 2010. Without this corrective language, from \$500,000 to \$1 million of the projected revenue enhancement from "10% haircut" in HB 2365 will potentially be lost.

Administrative Fee for Entering Into Payment Plan

Impose an administrative fee of \$10 when a taxpayer with delinquent tax liability applies to the Department Compliance and Enforcement Staff to enter into an installment plan to pay off the delinquent tax liability. The \$10 fee would go into the Recovery Fund for Enforcement Actions and Attorney Fees for use by the Department in offsetting its compliance/enforcement costs.

Adopt Federal Definition of "Willfulness" for Sales Tax and Withholding Tax

A person responsible for remitting sales tax or employer withholding tax on behalf of a business can be held personally liable for that tax if the person is found to have

"willfully" failed to collect and remit the tax. See K.S.A. 79-32,100c, 79-32,107(e), 79-3643. The Department has relied on the definition of "willfulness" used under the Federal Internal Revenue Code, since there is no explicit definition of "willfulness" in the state tax statutes. However, the Department recently lost a case at the Court of Tax Appeals, where the court imposed an even higher standard for determining "willful" conduct--a standard so high that it is virtually impossible for the Department to meet. It seems reasonable that the Department should not be held to a higher standard in proving "willful" conduct to establish "responsible person" liability than would apply under the Internal Revenue Code. This proposal would insert the Federal Internal Revenue Code definition of "willfulness" in the sales tax and withholding tax personal responsibility statutes. Without this proposal, the Department's efforts to enforce the personal responsibility statutes will be severely compromised.

Streamlined Sales Tax Conformity Requirements

The Streamlined Sales and Use Tax Agreement, of which Kansas is a Governing Board Member State, was recently amended to require for state sales tax rate changes, retailers must be given 30 days notice of the rate change, or if not, retailers will be held harmless for failing to collect the correct rate for 30 days after enactment of the new rate. K.S.A. 79-3666 would be amended to conform to this requirement.

The Department's statutes governing the administration and contents of sales tax exemption certificates, K.S.A. 2009 Supp. 79-3609 and 79-3651, also need to be modified to conform to recent amendments to the Streamlined Sales and Use Tax Agreement.

Conforming amendments need to be made to the "direct mail" sourcing provisions at K.S.A. 2009 Supp. 79-3672.

These changes are necessary to keep Kansas in good standing as a Member State.

Impose Cigarette Tax on Internet Purchasers

In 2004, HB 2682 was enacted to require that sellers of cigarettes over the Internet must be licensed and must determine that purchasers are of legal age. The cigarette shipping package must also contain a label informing the purchaser that under federal law (the Jenkins Act), a seller outside the state must report the sale to the purchaser (including the purchaser's address) to the state revenue department, along with a warning that the purchaser is responsible for all unpaid state taxes on the cigarettes. However, this legislation did not expressly impose the cigarette tax on cigarette purchasers. Under current law, cigarette distributors are subject to the cigarette tax. This proposal would impose the cigarette tax on purchasers of cigarettes for the cigarette tax has not been paid by the wholesale dealer, such as with purchases made over the Internet. The Department's legal staff recommends this legislation to facilitate collection efforts against Internet purchasers of cigarettes.

Modernize the Cigarette/Tobacco Products Tax statutes:

1. Tax Indicia. Add provisions to address the integrity and handling of tax indicia. The statute does not currently address what the level of readability or how the tax indicia must be placed on a package of cigarettes. The legislative proposal would provide the Director to authority to establish rules and regulations to address how the stamp must be applied, the readability of the stamp, etc.
2. Little Cigars– change the definition of cigarettes to subject little cigars and cigarettes wrapped in non-paper wrappers to cigarette tax vs. the tobacco products tax. Little cigars are sold in packages and resemble cigarettes. The difference is they are wrapped in tobacco leaf vs. rolling paper. The current definition of cigarette does not allow for little cigars or other cigarettes wrapped in non-paper wrappers to be taxed as cigarettes. Under this proposal, the definition of cigarettes would be modified so these items are subject to the cigarette tax.
3. Non-paper wrappers subject to tobacco products tax. Amend the definition of tobacco products to include non-paper wrappers as taxable.
4. Suspension and Revocations – Create separate definition for each term in the statute (currently they share a definition). Update statute to impose stricter penalties for selling cigarettes with a suspended license and increase the revocation period to 10 years. Also provide for denial of a license when the violations are outstanding.
5. Remove/amend outdated language as follows:
 - a. KSA 79-3302 – amend (a) to be inclusive of all statutes under the cigarette and tobacco products tax statutes.
 - b. Vending Machines – Adult Only facility. Amend the statutes to require all cigarette and tobacco vending machines must be placed within an adult only facility. This is a change being recommended to bring Kansas in line with federal rules (new FDA rule going into effect June, 2010). This proposal would amend KSA 79-3303.
 - c. Remove meter imprint language in the cigarette statutes (KSA 79-3310c, 3311, 3312).

Amendments to Liquor Control Act

Amend liquor control act to include a permit allowing import, storage, packaging, and export of alcoholic liquor and cereal malt beverage, and amend K.S.A. 41-501 to require a distributor to pay gallonage tax on any alcoholic liquor imported into this state that is subsequently sold to a licensed distributor for sale at wholesale.

Reintroduce the last version of provisions of 2009 Senate Bill 97, which passed both houses last session but was left out of the conference committee report. This proposal clarifies the power of the director of Alcohol Beverage Control (ABC) to revoke, suspend, or fine a licensee for failing to timely file and pay liquor enforcement tax, creating consistent enforcement throughout the industry, and encouraging compliance with the provisions of the liquor enforcement tax act.

Update Motor Carrier Valuation and Assessment Statutes

Currently, K.S.A. 79-6a01 references a federal statute that has been repealed, specifically 49 U.S.C. 11506. 49 U.S.C. 11506 was referenced in K.S.A. 79-6a01 to define motor carriers subject to state assessment. The amendment defines motor carriers to include for hire motor carriers operating in this state, but excludes from state assessment those operating within a radius of 25 miles beyond the corporate limits of its city or domicile. The other major change is to require motor carrier tax protests to be filed with the Court of Tax Appeals. Currently, motor carrier tax protests are filed in the district court where the motor carrier is operating or, in the case of a nonresident motor carrier, in Shawnee County District Court. The amendment makes other changes that are minor in nature, including changing the filing date from March 20 to May 15, and creating a lien for unpaid motor carrier property taxes.