

SESSION OF 2002

**CONFERENCE COMMITTEE REPORT
SENATE BILL NO. 472**

As Agreed to May 15, 2002

Brief *

SB 472 would enact the Taxpayer Fairness Act, a number of administrative clean-up measures recommended by the Department of Revenue, the Kansas version of the streamlined sales tax act, and provide income tax credits for certain contributions.

Administrative Clean-Up. Language would clarify that the Secretary of Revenue is authorized to adopt rules and regulations necessary to administer and enforce, as provided by law, various taxes and that all rules and regulations in existence on the effective date of the act would continue to be in effect.

Amendments to KSA 2001 Supp. 74-2438 and KSA 79-3226 would clarify that taxpayers are authorized to appeal to the State Board of Tax Appeals at any time when no final determination has been made by the Department of Revenue after 270 days since the date of request for informal conferences, provided no written agreement exists between the parties agreeing to extend the time for final determination.

Additional amendments to KSA 79-3650 would expand the circumstances under which consumers are authorized to file sales tax refund claims directly with the Department in lieu of going through retailers. Refund claims from individuals would be acceptable when accompanied with notarized statements from retailers: (a) disavowing making the same refund claims on behalf of consumers; (b) agreeing to provide documentation of any information to consumers regarding the claims; (c) acknowledging that the tax in question has already been remitted to the state; and (d) stipulating that credits have not been and will not be taken for the amount of tax in question.

*Conference committee summary reports are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree.

Another provision would clarify current law regarding how income is reported for Kansas corporate income tax purposes. The bill would confirm that Kansas uses a transactional test to determine whether income is apportionable business income. Under the transactional test, the controlling factor for the determination of business income is the nature of the particular transaction giving rise to the income. To be business income, the transaction and activity must have been in the regular course of the taxpayer's business operations.

Another section would provide statutory authority for the Department of Revenue to setoff a taxpayer's liability for one type of tax against the taxpayer's overpayment of another type of tax. The bill would expressly provide that overpayments of estimated income tax will first be applied to any other tax liability, with the balance remaining available for refund or credit. The bill also amends certain statutes to replace references to the "Director of Revenue" with the "Secretary," reflecting the current organizational structure of the Department of Revenue.

KSA 2001 Supp. 75-5154 would be amended to add marijuana and controlled substance taxes to the list of other excise taxes that currently may be abated by the Secretary of Revenue or his designee.

Finally, additional language would provide civil penalties and interest provisions for failure to meet requirements relative to filing or payment of royalties for sand, gravel, or other products removed from river beds. The Department of Revenue would enforce the penalties, which could be waived or reduced at the Secretary's discretion.

Streamlined. Additional language would authorize the Department of Revenue to become a signatory to the multistate streamlined sales and use tax agreement and make preparations for its implementation, which would not occur until such time as the Legislature takes further action to bring the state's laws into compliance with the agreement. The Department would be specifically required to identify all changes in law and rules and regulations necessary and sufficient to meet the agreement's compliance requirements. The bill also provides that the Secretary of Revenue or his designee is authorized to represent Kansas before other states participating in the streamlined sales tax project or that are signatories to the agreement. Appointees of the Senate President, House Speaker, Senate Minority Leader, and House Minority Leader also would be authorized to represent Kansas. All such appointees would be paid compensation, subsistence allowances, mileage, and other expenses as provided in KSA 75-3223.

Taxpayer Fairness. Other sections of the bill would enact the Taxpayer Fairness Act of 2002:

1. Among the new provisions of law would be a requirement that Department of Revenue correspondence regarding tax assessments contain detailed, clear and accurate explanations of the assessments demanded, including specific information on the tax and tax year in question, as well as on penalties and interest. Any such correspondence involving amounts in excess of \$750 for individual accounts and \$2,000 for business accounts would be required to be reviewed for accuracy by departmental employees prior to issuance and to contain the employee identification number and telephone number of employees performing the accuracy reviews. An additional requirement relating to correspondence seeking to change the tax or refund due on returns filed by taxpayers would mandate that the proposed change be explained in simple and nontechnical terms.
2. If a taxpayer has designated a third party or other representative to discuss Kansas income tax returns, the Department would be required to adhere to and comply with such designation and in discussions and correspondence regarding issues related to the returns.
3. The Department also would be required to waive civil penalties upon the finding of any circumstance allowing waiver of civil penalties pursuant to the provisions of the federal Internal Revenue Code.
4. Closing letters also would be required to be issued within 30 days upon the resolution of assessments to taxpayers or taxpayers' representatives. Taxpayers would be entitled to rely on the closing letters, and the Department would be prohibited from maintaining positions against taxpayers inconsistent with the stipulations of the letters.
5. The Department would be required to notify in writing persons who are the subject of tax warrant filings. The notification would have to be delivered within five business days of the date the warrant is filed and would be required to include in simple and nontechnical terms the amount of unpaid taxes, information on the administrative appeals process available to the taxpayer, and on the provisions of law relating to the release of warrants on property.

6. KSA 79-3226 would be amended to change a provision prohibiting additional individual income tax assessments in amounts of less than \$5. Under the new language, additional tax amounts of up to \$100 could be waived when the Department has determined that administration and collection costs involved would not warrant the efforts.

Regents Foundation Tax Credits. An additional section would authorize nonrefundable income, premiums, and privilege tax credits beginning in tax year 2002 equal to 66.67 percent of amounts donated to the Kansas Regents Foundation. KSA 2001 Supp. 79-32,117 would be amended to require income taxpayers to add back to federal adjusted gross income any such amounts donated to the extent they have been claimed as the basis for the new credit. (This effectively prohibits income taxpayers from receiving a state deduction as well as a credit for the donations.) A final provision would require that the total amount appropriated to the State Board of Regents for the fiscal year next following the taxable year for which any credit is allowed be reduced by the total amount of such credit. Based on the latest fiscal information, the credit provisions would be expected to reduce State General Fund receipts by \$5.55 million in FY 2003. Appropriations to the State Board of Regents would be required to be reduced by the amount of credits claimed beginning in FY 2004.

Background

The original SB 472 dealt with the phone card issue. Conferees on May 14 and May 15 stripped the original contents and inserted the aforementioned provisions.