

SESSION OF 2003

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2416

As Amended by Senate Committee of the Whole

Brief*

HB 2416 would provide a tax amnesty under certain circumstances that would forgive penalties and interest assessed on certain unpaid taxes if the outstanding liability is paid in full from October 1, 2003, to November 30, 2003. Included in the amnesty provisions would be financial institution privilege taxes; estate taxes; income taxes; withholding and estimated taxes; cigarette and tobacco products taxes; sales and use taxes; liquor enforcement taxes; liquor drink taxes; and severance taxes.

The amnesty for income and privilege taxes would be for liabilities for tax periods ending on or before December 31, 2001. For all other taxes, the amnesty would be for tax periods ending on or before December 31, 2002.

The amnesty provisions would not apply if any of the following has occurred on or after February 6, 2003:

- ! The taxpayer has received notice of the commencement of an audit;
- ! An audit is in progress;
- ! The taxpayer has received notice of an assessment pursuant to KSA 79-2971 or 79-3643;
- ! The taxpayer has received notice of a proposed or estimated assessment or notice of assessment as the result of an audit;
- ! The time to appeal administratively an issued assessment has not yet expired;
- ! An assessment resulting from an audit, or any portion of such assessment, is pending in the administrative appeals process

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/klrd>

before the Secretary of Revenue, Board of Tax Appeals, or the judicial review process.

Amnesty also would not apply to any matter that is the subject of an assessment, or any portion of an assessment, which has been affirmed by a reviewing state or federal district or appellate court. Amnesty further would not apply to any party to any criminal investigation or to any civil or criminal litigation that is pending in any court for nonpayment, delinquency, or fraud in relation to any tax imposed by the State of Kansas.

The Secretary of Revenue would be required to develop application forms for the amnesty.

Taxpayers electing to participate in the amnesty would be making "an express and absolute relinquishment of all administrative and judicial rights of appeal" with respect to the affected liability. Amnesty payments would be ineligible for refunds or credits. Any payments of penalties or interest made prior to October 1, 2003, would be ineligible for the amnesty.

For tax returns for which amnesty has been requested, nothing in the legislation would be interpreted to prohibit adjustments to such returns resulting from audits.

Finally, fraud or intentional misrepresentation of a material fact in connection with an amnesty application would void the application and any waiver of penalties and interest; and discovery of fraud relating to the underlying tax liability would void the abatement of any liability pursuant to the amnesty.

Additional provisions of the bill would redefine "retailer doing business in the state" for purposes of sales and use taxes to include retailers having or maintaining permanently, temporarily, directly or indirectly through a subsidiary, agent or representative, an office, distribution house, sales house, warehouse, or other place of business. New language further would require in-state businesses to collect sales tax on the selling price of items delivered to in-state customers who have ordered such items from out-of-state businesses not registered to do business with Kansas.

Background

HB 2416 was requested for introduction and supported by the Department of Revenue. At the time the bill was approved by the House Taxation Committee, its provisions were expected to increase State General Fund tax receipts by an additional \$4.5 million in FY 2004 relative to current law. This amount had already been taken into account in the Governor's Budget Report.

Revised Fiscal Impact. Subsequent information from the Kansas Department of Revenue has indicated that the positive fiscal impact on the SGF from the legislation would be \$19.5 million.

The Senate Committee of the Whole added the amendments relating to the new definition of retailer doing business in the state for sales and use tax purposes; and requiring in-state businesses to collect sales taxes under certain circumstances on items delivered to in-state customers from out-of-state businesses.