SESSION OF 2007

CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2171

As Agreed to April 2, 2007

Brief*

Senate Sub. for House Sub. for HB 2171 would make a number of changes in sales tax refund procedures; modify various statutory definitions and implement other changes necessary to maintain compliance with the multi-state Streamlined Sales and Use Tax Agreement; authorize the suspension of sales tax registration certificates for certain taxpayers in default; and provide a number of new sales tax exemptions.

Sales Tax Refund Procedures

One section of the bill, relating to sales tax refunds, would codify a number of definitions and procedures currently found in rules and regulations. Among the major provisions is a requirement that an agent or representative filing a refund claim on behalf of a taxpayer submit a power of attorney.

The bill also would codify a specific list of information and documentation requirements that must be met for a refund application to be considered complete and properly filed.

Additional language further would clarify that the three-year statute of limitations for refund claims starts on the due date of the return for the reporting period that includes the transaction on which the refund claim is based. The statute of limitations would not be tolled until a complete and fully documented refund claim has been filed, except that taxpayers

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*Conference committee report briefs 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. Conference committee report briefs may be accessed on the Internet at http://www.kslegislature.org/klrd who initially file certain incomplete refund claims would have an additional 60 days from the date of the Department of Revenue's written notice to comply.

Other provisions would:

- Clarify that interest would not start to accrue until a complete and fully documented refund claim has been filed; and that no interest would accrue for claims paid within 120 days after such filing;

- Establish a procedure wherein refund applications would be initially reviewed to determine whether they meet the information and documentation requirements;

- Provide that persons submitting refund claims for sales or use taxes never collected by the retailer, or that the retailer had already refunded, would be subject to a 50 percent penalty of the amount of tax sought to be refunded; and

- Clarify that consumers or purchasers could request direct refunds of sales or use taxes only for amounts equal to or exceeding $50.

<u>Streamlined Agreement</u>

A number of definitions and requirements also would be enacted to allow Kansas to retain status as a member of the Streamlined Agreement, including provisions relating to exemption administration; liability relief; a rates and boundaries database; bundled transactions; durable medical equipment; telecommunications services; multiple points of use; and direct mail delivery charges.

Sellers obtaining exemption certificates from purchasers would be afforded greater liability protection than under prior law pursuant to various amendments, including one to KSA 79-3651.

Additional language would provide liability relief from tax, penalty and interest to purchasers for failure to pay the correct tax in reliance on erroneous data from the Department of Revenue on tax rates, taxing jurisdiction boundaries, or in the taxability matrix.

Liability relief also would be extended under certain circumstances to certified service providers (CSP) and certain "model 2" sellers for not collecting the correct tax if the secretary had previously certified the adequacy of the CSP's software program with respect to exemptions.

An amendment to KSA 79-3668 would provide that once the Department of Revenue had developed an address-based system for assigning taxing jurisdictions, CSP's and sellers would be required to use that system, instead of the zip code database currently being utilized. Any database that the Department utilizes would have to be provided free of charge.

A definition of "bundled" transaction, which involves the sale of two or more products for one non-itemized price, also would be provided. New language also would clarify that only when a transaction fits within that definition would the nonitemized price for the bundle be fully taxable. (If taxable and non-taxable portions of the price are itemized separately, the tax would be limited to the sale of the taxable items.)

An additional provision would clarify that certain prescribed oxygen delivery equipment, kidney dialysis machines, and enteral feeding systems would remain exempt by virtue of being excluded from the definition of "durable medical equipment."

Various statutory terminology relating to "telecommunications services" would be made uniform relative to the Agreement, including a definition of "ancillary services," which would be excluded from the main telecommunications services definition.

Another provision would repeal the multiple points of use sourcing statute, K.S.A. 79-3671, which dealt with the taxation of computer software delivered electronically and used at multiple locations.

Additional language relative to the definition of "delivery charges" would clarify that the sales tax would not apply to postage on direct mail.

Suspension of Sales Tax Registration Certificates

Additional provisions would authorize the Secretary of Revenue to suspend or revoke the sales tax registration certificate of certain taxpayers found in default for at least 60 days in the remittance of the tax or failure to file returns. Prior to such suspension or revocation, the Secretary would be required to provide 30 days' notice regarding a show-cause hearing to be conducted under the Kansas Administrative Procedure Act (KAPA). Suspended or revoked certificates could not be reinstated until all extant tax, penalty and interest liabilities had been satisfied. Suspensions or revocations also would be deemed to apply to all individuals who are responsible parties for the collection or payment of sales taxes.

Additional language would clarify that it would be unlawful for any person to engage in the business of selling tangible personal property or furnishing taxable services after such person's certificate had been suspended or revoked.

Sales Tax Exemptions

The bill further would provide a sales tax exemption for the purchase of property and services by contractors for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling state correctional institutions, as well as privately constructed correctional institutions contracted for state use and ownership.

The bill also would provide a sales tax exemption for a number of not-for-profit groups, including the Dream Factory, Jazz in the Woods, Ottawa Suzuki Strings, Lions Clubs, Johnson County Young Matrons, the Frontenac Educational Foundation, the Booth Theatre Foundation, TLC Charities, the American Cancer Society, the Rotary Club of Shawnee Foundation, Victory in the Valley, the Angel Babies Association, and the Community Center of Shawnee.

All such groups except the Rotary Club of Shawnee Foundation would have both their sales and purchases exempt. That group would only have their purchases exempt. Two of the groups, TLC Charities and the Booth Theatre Foundation, also would have the exemption for their purchases extended to purchases made on their behalf by contractors.

Finally, additional language in the bill would clarify the sales tax exemption for farm machinery and equipment to provide that the exemption includes precision farming equipment that is portable or is installed or purchased to be installed on farm machinery and equipment. "Precision farming equipment" would be defined to include certain specific items used only in computer-assisted farming, ranching or aquaculture production operations.

Conference Committee Action

The original bill dealt with the subject matter of the sales tax refund procedures. The Senate Assessment and Taxation Committee added the provisions relating to the Streamlined Agreement, which also were approved by the House in HB 2590.

The Conference Committee agreed to include the provisions of SB 115 relating to the suspension of registration certificates; SB 382 relating to sales tax exemption for prison construction and certain not-for-profit entities; and Sub. for SB 375 relating to the clarification for the tax treatment of precision farming equipment.

Background

The not-for-profit sales tax exemptions would combine to reduce receipts to the State General Fund (SGF), State Highway Fund (SHF), and local units levying sales taxes by the following amounts:

($ in millions)

	SGF	SHF	State Total	Local Tax	State + Local
FY 2008	($0.570)	($0.080)	($0.650)	($0.163)	($0.813)
FY 2009	($0.590)	($0.083)	($0.673)	($0.169)	($0.841)
FY 2010	($0.611)	($0.085)	($0.696)	($0.175)	($0.871)
FY 2011	($0.632)	($0.088)	($0.721)	($0.181)	($0.901)
FY 2012	($0.654)	($0.091)	($0.746)	($0.187)	($0.933)
5-year total	**($3.058)**	**($0.427)**	**($3.486)**	**($0.874)**	**($4.360)**

During the hearing on SB 382, the Department of Revenue deferred to the Department of Corrections relative to the fiscal note on prison construction issue. The Department of Corrections said that while sales tax receipts would be reduced by an indeterminate amount, the state would be able to reduce expenditures by an even greater amount in the long run by not having to finance those costs associated with the tax through bonded indebtedness.

None of the other statutory changes in the bill would be expected to have any direct fiscal impact. Secretary Wagnon said that if Kansas were to lose its status as a member of the Streamlined Agreement as a result of not approving the provisions relating to the Agreement, more than $30 million the state currently receives annually in voluntary compliance revenues could be imperilled.

sales tax; exemptions; streamlined