

## MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on February 12, 2008 in Room 519-S of the Capitol.

All members were present

Committee staff present:

Chris Courtwright, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Ryan Hoffman, Legislative Research Department  
Richard Cram, Department of Revenue  
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Secretary Wagon, Kansas Department of Revenue  
Jim Bartle, General Counsel, Kansas Department of Revenue  
Mike Boekhaus, Director of Audit Bureau  
Shirley Sicillan, General Counsel, Multistate Tax Commission  
Marlee Carpenter, Kansas Chamber of Commerce

Others attending:

See attached list.

Representative Owens requested a bill introduction on behalf of Representatives Hill and Mast which would allow an income tax credit from adoption expenses. Representative Owens made the motion to move the request and Representative Carlson seconded. The motion carried.

Representative Metsker requested the introduction of two sales tax exemptions relating to the GM Fairfax Retirees Club and the Veterans Voices Writing Project. Representative Carlson moved the request, and Representative Owens seconded. The motion carried.

Chairman Wilk advised the committee that President Bush plans to announce the federal stimulus package later this week, which in turn may effect the state since Kansas is coupled to the Federal guidelines. They are currently preparing data on the effects of the new stimulus package for review. The Chairman also announced the Committee will hear Sub-committee's reports and recommendations on BOTA and Disaster relief next week.

**HB 2762 - Corporate income taxation changes relating to apportionment of net income, business income and surtax on corporations.**

Chris Courtwright said the bill would allow full apportionment of business income for all tax years commencing after December 31, 2008. In addition, it would allow a taxpayer to include only the net gain from sales of business assets when calculating the sales factor. Finally, **HB 2762** would reduce the surtax rate for corporations with Kansas taxable income in excess of \$50,000 from 3.35 percent to 2.85 percent. This rate reduction would go into effect starting in tax year 2009.

The Chairman opened the public hearing on **HB 2762** and invited Secretary Wagon to explain the details of the bill.

Secretary Wagon said that during the 2007 legislative session, the House Tax Committee considered a proposal to broaden the definition of "business income" contained in statute. This proposal was subsequently referred for interim study to the Special Committee on Assessment and Taxation, which studied the issues and made recommendations. She introduced staff members that followed her to the podium to provide more details.

Jim Bartle, General Counsel, KDOR, spoke to the Committee about a proposed balloon amendment on **HB 2762** (Attachment1). He reviewed the recommendations made by the Special Committee on Assessment and Taxation:

1. The Committee finds that changing the definition of business income to include both the

## CONTINUATION SHEET

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functional and transactional tests would encourage additional corporations to locate in Kansas.

2. The Committee notes that the Secretary of Revenue appears to have reached an agreement with various interested parties on specific language regarding this provision.

3. The Committee; therefore, amends the introduction of legislation that would clarify the definition of business income to add the functional test.

Mr. Bartle explained three reasons for amending the definition of “business income” which follow:

1. Broadening the tax base will make it possible to reduce the corporate income tax rate or provide some other form of tax relief.

2. Codification of the functional test will bring Kansas into conformity with other states that impose a corporate income tax, the vast majority of which utilize both the functional and transactional tests.

3. Multi-state uniformity, with respect to the definition of “business income,” will prevent the under-inclusion and over-inclusion of income in determining the tax liabilities of corporations with operations in several states.

He said the proposed balloon, attached to his testimony, is consistent with the recommendation of the Interim Committee and asked for the Committee’s support. In response to a question from the Chairman, he said that the language in the balloon has been agreed upon with members of the business community. Members of the working group that drafted the language were: James Bartle, Mark Burghart, Mark Beshears, Lucky DeFries, attorneys that represent the Kansas Chamber of Commerce.

Gordon raised an issue on which part of the amendment language would be struck and agreed to get back to the Committee with details.

Mike Boekhaus, Director of Audit Bureau, reviewed slides from a power point presentation on Business and Nonbusiness Income (Attachment 2). He gave an example of what happens when a business sells a plant for \$100 million gain and what happens in Kansas verses other states. He also described “churning” and gave an example of non-churning and churning tax calculation.

Shirley Sicillian, General Counsel, Multi-state Tax Commission, provided national context for two of the proposed amendments being considered:

1) an expansion of the definition of “business income”

2) a clarification that the sales factor does not include returns of principal from short-term investments

Both proposed amendments address issues that have been, or are being, faced in many states as well as Kansas. Both would address tax issues that are consistent with other states (Attachment 3).

Marlee Carpenter, Kansas Chamber of Commerce, rose in support of corporate income tax reduction to foster economic growth and job creation in the state. As Kansas competes with other states, the Kansas corporate income tax stands out as a disincentive for investment (Attachment 4). Her testimony included a 2007 Corporate survey series, which ranks the factors used when considering new business ventures. Also included was a “background paper,” which is an executive summary on the 2008 State Business Tax Climate Index.

The Chairman closed the hearing on **HB 2762**.

The meeting was adjourned at 10:55 A.M. The next meeting is February 13, 2008.