

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on March 5, 2008 in Room 519-S of the Capitol.

All members were present except: Representative Dillmore - Excused

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:

Mark Beshears, Sprint
Marlee Carpenter, KS Chamber of Commerce (written only)
David White, AT & T (written only)
John Cmelak, Verizon wireless
Mark Burghart, Attorney, KS Chamber of Commerce
James Bartle - KDOR

Others attending:

See attached list.

Representative Wilk requested a bill introduction regarding a sales tax exemption for the art association. Representative Carlson seconded the motion. The motion carried.

Representative Wilk opened the public hearing on **HB 2288**.

HB 2288 - Refund of retailers' sales tax paid on certain purchases of telecommunications machinery and equipment.

The Chairman invited Mark Beshears, Sprint, to brief the committee on the history of **HB 2288** (Attachment 1). He said the elimination of this tax on investment in telecommunications network assets would have significant benefits for Kansas businesses and constitutes sound tax policy:

- It is estimated that \$12 million in new network investment will occur in the first year following enactment.
- Additional jobs will be created including positions that go beyond those directly related to the installation of such network equipment.
- Telecommunications is one of the few industries in Kansas without a sales tax exemption for the purchase of equipment used in production operations.
- Tax experts universally agree that the sales tax should be on the final consumption of a product, not on the input used to produce the product, in order to prevent the pyramiding of tax.
- There are a total of 23 states plus the District of Columbia that do not tax the purchase of telecommunications equipment.

HB 2288, with amendments agreed to by the Department and the Telecom Coalition has the following features:

- A refund mechanism is established for all purchases of telecommunications machinery and equipment occurring on and after July 1, 2008.
- Only the state tax (currently 5.3%) would be subject to the refund provision.

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- Any refund claim would be subject to a one year statute of limitations. No interest would be paid by the state on any refund claim.
- Under the Streamline Sales Tax System (SST), sales tax exemptions are required to be uniform for state and local sales tax purposes. Since the relief sought by this legislation applies only to the state imposition, a refund mechanism must be utilized as opposed to an exemption for any qualifying purchases so as not to impact the SSTP.

The industry has worked with the Department of Revenue to ensure that the language of the exemption is precise and clearly enumerated. He called attention to the balloon amendment contained in his testimony.

There was a question on a discrepancy of figures reflected in the fiscal note. Richard Cram explained how the Department had determined their projected figures. Mark Breashers agreed to clarify the figures on the fiscal note with their accounting source and return and explain the numbers.

It was noted that written testimony was received in favor of **HB 2288** from: Marlee Carpenter, KS Chamber of Commerce, David White, AT &T, and John Cmelak, Verizon Wireless (Attachment 2).

The Vice Chairman closed the public hearing on **HB 2288**.

Unitary Tax Briefing

The Vice Chairman invited Mark Burghart, Attorney, KS Chamber of Commerce, to brief the Committee on the utilization of credits in a corporate unitary (Attachment 3). Kansas currently employs the unitary business principle when it taxes multistate corporations. This particular approach to taxing multistate companies is long-standing and has been sanctioned by the Kansas Supreme Court on several occasions.

He described two proposals that are under consideration during this legislative session:

- *Utilization of High Performance Incentive Program (HPIP) credits in a Unitary Group.* The first proposal would amend statute to provide clarifying guidance that credits, earned under the HPIP, may be shared among members of a unitary group of companies, filing a combined report, for Kansas corporate income tax purposes.
- *Qualifying for the Job Expansion and Investment Credits and Enterprise Zone Credits in a Unitary Group.* The second proposal would clarify the Job Expansion and Investment Credit Act, and the Kansas Enterprise Zone, as these Acts relate to capital expenditures and job creation by corporations which are part of a unitary group.

In response to a committee question on how many other states use the unitary formula, Mr. Burghart agreed to get that information for the Committee.

James Bartle, General Counsel, KDOR, distributed a copy of letter to Senator Allen, Chairperson of the 2007 Interim Committee, that addressed the Interim Tax Topic #1, Corporate Income Tax Shelters - Use of an HPIP credit by multiple members of a unitary group. The letter explained the language and manner in which such language has been construed by the courts (Attachment 4).

A second memorandum was distributed that listed several important concepts utilized in the taxation of corporations under the Kansas Income Tax Act (Attachment 5). The summary included:

Unitary Business - Description as defined by the Kansas Supreme Court in Pioneer Container Corp. v. Beshears, 235 Kansas 745, 684 P.2d 396

Combined Reporting - When two or more corporations are engaged in a multi-state unitary business, statute authorizes utilization of the combined report method of allocation of income and expenses.

Formula Apportionment - A combined report has been used to determine the total net income of a

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unitary business, an apportionment formula is then applied to determine for each member of the unitary group the amount of income that is attributable to the taxing state.

Kansas Tax Review Commission - Final report and recommendations

Discussions followed on possible unintended consequences of passing legislation on the tax credits before them.

The Chairman thanked Mr. Burghart and Mr. Bartle for their Unitary Tax Briefing. The meeting was adjourned at 10: 30 A.M. The next meeting is March 6, 2008.