

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:50 a.m. on February 6, 2002, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Don Hayward, Revisor of Statutes Office  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Richard Cram, Kansas Department of Revenue

Others attending: See attached list.

The minutes of the February 4, 2002, meeting were approved.

Senator Corbin requested the re-introduction of a bill introduced in the 2001 Session concerning the participation by the Department of Revenue in the Streamlined Sales Tax Project, **SB 252**, with an added provision authorizing more people to attend the Streamlined Sales Tax meetings. Both the majority and minority leadership of the Senate and the House would be authorized to appoint a person to the committee. He noted that other states have involved many more people on the secondary committee. Participants believe that the more people learn about the project, the better.

Senator Praeger moved to re-introduce **SB 252** as requested by Senator Corbin, seconded by Senator Donovan. The motion carried.

Senator Corbin requested the introduction of a bill dealing with all terrain vehicles (ATVs). The bill would provide that owners of ATVs must show proof of payment of property tax before they can purchase a registration sticker for the ATV.

Senator Donovan moved to introduce the bill as proposed by Senator Corbin, seconded by Senator Goodwin. The motion carried.

Senator Jenkins moved to introduce a bill which would require state withholding on all non-resident distributions from partnerships, LLCs, and Subchapter S corporations, seconded by Senator Clark. The motion carried.

Senator Jenkins moved to introduce a bill which would require state withholding on prize money from professional athletes participating in Kansas based sporting events, seconded by Senator Lee. The motion carried.

**SB 413–Setoff of taxpayer refunds against liabilities**

Richard Cram, Kansas Department of Revenue, testified in support of **SB 413**. He explained that, because taxes are treated as a personal debt of the taxpayer, they are subject to the common law right of setoff. When a taxpayer owes tax on one type of tax but has overpaid a tax of another type, the Department exercises its common law right of setoff by applying the taxpayer's refund to the tax liability. Section 1 of the bill would codify the Department's common law right to setoff. Section 2 would make a "clean up" correction to K.S.A. 79-2015 by simply replacing references to the "director of revenue" to "secretary." Sections 3 and 4 amend K.S.A. 79-32, 104 and 105 so that they will be consistent with Section 2. Mr. Cram noted that the bill needs to be corrected on page 1, line 31, by striking "Provided, That." (Attachment 1)

Committee questions followed at which time Senator Clark noted that perhaps "director" should be changed to "secretary" in Section 4, line 33. Mr. Cram agreed. In addition, Mr. Cram acknowledged that the Department's use of the common law right of setoff has not been challenged since the Department made the decision to begin to use it in 1998 in connection with Project 2000. He explained that the Department's philosophy is that, in the interest of clarity, it is better to rely on statute than common law doctrine. With this, the hearing on **SB 413** was closed.

## CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:50 a.m. on February 6, 2002, in Room 519-S of the Capitol.

### **SB 414—Penalties; sand and gravel royalties**

Mr. Cram noted that, pursuant to K.S.A. 70a-106, the state owns the mineral rights and the right to natural products within the state's river beds. Under K.S.A. 2001 Supp. 70a-102, any person who desires to take sand, gravel, oil, gas, minerals, hay, timber, or other natural products from a river bed must obtain consent from the Director of Taxation. With respect to river sand and gravel, lessees must pay the state compensation, and they must file returns with specific information regarding the material withdrawn. Mr. Cram explained that K.S.A. 70a-108 provides general criminal penalties for violation of Chapter 70a; however, no civil penalties are specified for failure to file returns, late filing, late payments, or failure to make prescribed payments. **SB 414** would add new civil penalty and interest provisions regarding payments for sand, gravel, or other natural products removed from river beds. Mr. Cram requested that the bill be amended on line 34, subsection 1(c), to delete "(a)(1)," which does not need to be referenced because it does not contain a penalty provision. (Attachment 2) The hearing on **SB 414** was closed.

### **SB 415—Payment of tax liability by electronic funds transfer**

Mr. Cram noted that over half of the total monthly revenue payments received by the Department are made by electronic funds transfers, and payment by this method greatly enhances the state's cash flow situation because the funds are received immediately. Mr. Cram further noted that the Secretary of Revenue is authorized to require a taxpayer whose total sales tax or withholding tax liability exceeds \$100,000 in a calendar year to remit payments by electronic funds transfer. Under current statute, even if the Secretary has notified the taxpayer that remittance by electronic funds transfer is required, the taxpayer will not be subject to any penalty for continuing to pay by check and failing to pay by electronic funds transfer as long as the Department receives the payment by the due date. Mr. Cram went on to explain that the Department has experienced difficulty in obtaining compliance from approximately 20 large corporate taxpayers, most of which greatly exceed the \$100,000 threshold. He reasoned that, without a penalty provision, violators have little incentive to comply with the requirement to pay by electronic funds transfer. **SB 415** would add a penalty provision to K.S.A. 75-5151 for failure to pay by electronic funds transfer following notification to do so, even if payment by check would otherwise be considered timely. (Attachment 3) The hearing on **SB 415** was closed.

### **SB 424—Abatement of drug taxes**

Mr. Cram explained that the Secretary has authority to abate or compromise uncollectible liabilities for a variety of taxes, but has no authority to abate or compromise drug taxes. As of December 31, 2001, the Department has accrued \$110,162,183.51 in outstanding drug tax assessments since the drug tax was enacted in 1987. The Department estimates that 90 percent is uncollectible due to the fact that many times assessed taxpayers are incarcerated or otherwise lack good collection prospects. Because collection of these assessments is almost nonexistent, the amount of the Department's accounts receivable is artificially inflated and thus inaccurate. In the rare instance wherein it may be possible to obtain at least a partial voluntary payment from the taxpayer, the Secretary cannot compromise the drug tax assessment. If the Secretary is given the authority to abate or compromise drug tax assessments, uncollectible drug tax assessments can be written off and removed from the Department's accounts receivable balance, greatly increasing the accuracy. In addition, the Department's ability to collect voluntary drug tax payments will be enhanced. **SB 424** amends K.S.A. 2001 Supp. 75-5154 by adding a reference to K.S.A. 79-5201, marijuana and controlled substances tax, to the types of taxes that can be abated or compromised by the Secretary or the Secretary's designee. (Attachment 4) The hearing on **SB 424** was closed.

The meeting was adjourned at 11:45 a.m.

The next meeting is scheduled for February 7, 2002.

CONTINUATION SHEET

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