Approved: March 22, 2004
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:45 a.m. on March 18, 2004 in Room 519-S of the Capitol.

All members were present.

Committee staff present:
Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

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

Others attending:
See Attached List.

Senator Corbin called the Committee's attention to the minutes of the March 16 meeting. Senator Donovan moved to approve the minutes of the March 16, 2004, meeting, seconded by Senator Goodwin. The motion carried.

Senator Corbin opened the continued discussion on **SB 532** concerning sales tax remittance credit, income tax credit, and waiver of penalty and time for returns and payment of tax. He called upon Richard Cram, Kansas Department of Revenue, to present information requested at the March 16 meeting regarding different annual caps and discount percentages.

Mr. Cram distributed copies of a proposal for destination-based sourcing sales tax credit. (Attachment 1) He explained that, as suggested by Senator Donovan, the discount would be structured so that it would go only to those retailers affected by destination sourcing, and it would only be based on the sales that were sourced outside the location where the business is located. He explained that retailers would by paid 2% of the tax they remitted not to exceed a certain cap. Mr. Cram then distributed copies of a table showing figures for discounts of 2%, 3%, and 4% with different annual caps. (Attachment 2) He explained that a retailer would file their return and report the sales to the different jurisdictions. The Department would then identify which sales were sourced outside the taxing jurisdiction where the business is located. On a quarterly basis, the Department would calculate the discount and then pay it back to the retailer. After four payments are made, the Department would determine whether they were above or under the cap.

Mr. Cram noted that approximately 2,000 of 14,000 businesses have currently implemented destination sourcing. He explained that the fiscal numbers shown in the calculations assume that all businesses affected by destination sourcing would be implementing it and would be reporting their destination sourced sales. Initially, the fiscal note would be smaller because only a small number of businesses have implemented destination sourcing. He noted that the figures include all filers–annually, quarterly, monthly–who are doing destination sourcing. The Department believes that the bulk of those impacted will be the monthly filers.

Senator Donovan commented that the fiscal notes reflect that the proposal would not reward those retailers that are not hurt at all by destination sourcing and would only reward those being adversely affected. In his opinion, a 2% discount is too low. He believes the reimbursement should be sufficient to convince retailers that the state will help them make a conversion to destination sourcing, looking towards the time when the Streamlined Sales Tax goes into effect for all retailers, at which time the percentage could be reduced.

Senator Taddiken and Senator Lee expressed their concern that starting at a higher rate and then later dropping it back will give the impression that something is being taken away. They support starting at the intended level and phasing in people rather than raising and lowering the rate. Senator Corbin observed that it is easier to raise than to it is to lower.

Senator Donovan suggested that the discount rate start at a least a 4% because the intent is to reimburse retailers with small increment sales in most cases. He contented that, if the initial number is not high enough for the "little guys," they will not consider the payment to be enough to be worth the trouble. In his opinion, an initial higher percentage is necessary to demonstrate to small retailers that destination sourcing is a beneficial program even though it is a long-range program. For the Committee's information, he asked Hal Hudson, National Federation of Independent Businesses, to express his opinion of the proposal. Mr. Hudson answered that NFIB believes that it is a reasonable place to start.

Senator Lee moved to amend **SB 532** to reflect a 2% discount with an annual cap of $15,000 to become effective January 1, 2005, seconded by Senator Oleen.

Committee discussion followed as to whether the discount should begin at 2% or 4%. Senator Lee reiterated he opinion that 2% is a good place to start, noting that neighboring states give a 2% discount. Although she agreed that 4% would be a better incentive to comply, she expressed her concern that the legislature would change the language in the future to provide that it will not be reduced.

As a compromise to help small businesses, Senator Journey offered a friendly amendment to allow a 4% discount for the first $1,000 cap and reduce the discount to 2% up to a cap of $10,000 for the balance of any further reimbursement. Senator Lee had no objection to Senator Journey's suggestion. Discussion followed regarding the calculation of the reimbursement. Joan Wagnon, Secretary, Department of Revenue, confirmed that a staggered rate would change how the Department would administer the discount and would make the Department's calculation more complex. Senator Corbin commented that Senator Journey's suggestion would create more confusion for the retailer. In response, Mr. Hudson stood to acknowledge Senator Journey's attempt to help small business. However, he noted the difference between Senator Lee's motion and Senator Journey's suggestion is $20 a year. He agreed with Senator Corbin that it would not be worth the confusion to the retailer. Senator Donovan asserted that the easy way to handle it for small businesses is to do the higher percentage with the understanding written into the law that the state will reimburse a percentage of the destination sourced tax revenue. And then, once all sales are included, it becomes a different tax under a different reimbursement rate. He maintained that the simple answer is to start with 4% with a cap of $5,000 or $10,000 a year. In response, Senator Lee observed that she fears that, if the rate is lowered from 2% to 4% in a few years, retailers will lead a march on the Capitol complaining that their fees have been cut in half.
Senator Oleen commented that 4% will produce expectations that are going to be difficult for the state to fund.

Mr. Cram noted that a technical amendment is needed in the draft he presented to the committee. The word "credit" should be inserted to clarify that the discount would be either a credit or a payment, depending on the circumstances.

Upon a call for a vote on Senator Lee's motion, the motion carried with Senator Donovan voting "No."

Staff clarified for Senator Donovan that the original bill has a one-time $500 credit for quarterly and monthly filers. Senator Donovan noted that small business groups have indicated to him that a one-time $500 payment is not looked at as a benefit. Reimbursement is looked at as a fair exchange for the work done by retailers to collect taxes, and it is an ongoing benefit. He noted that the fiscal note on the $500 credit is about $3 million.

In response to committee questions, Secretary Wagnon clarified that **SB 532** provides for an income tax credit, not a refundable credit. She noted that, if the Committee would want it to be refundable, the Department would recommend that it be refunded from the sales tax fund.

Senator Corbin commented that **SB 532** was his idea as a possible solution. However, it has not been very well received by certain groups, and it has become more confusing than it should. Therefore, he has lost interest in it. He thanked the Committee for the time and work put into consideration of the bill.

Mark Ciardullo, tax specialist for the Department of Revenue, presented an overview of the retailers' compensating (use) tax as requested by Senator Oleen at a previous meeting. (Attachment 3) He explained that the use tax is a companion tax to the sales tax, the purpose of which is to impose the same tax burden on any consumer that purchases an item out of the state of Kansas and delivered into the state for use, consumption, and storage.

His overview includes the following topics: Taxation of Remote Sales, Exemptions, Credit for Taxes Paid to Another State, General Credit, Reciprocal Credit, No Credit, Collection of Use Taxes, Place of Business, Solicitation of Business by Representatives, Actual Enforcement Policies, Mandatory Registrants, Voluntary Registration, Individual Customers, Income Tax Reporting and Use Taxes, Cooperative Enforcement Efforts, Use Tax Leakage and Loss of Business to Other States, and Sales for Delivery outside the State. In conclusion, Mr. Ciardullo noted that the use tax remains the weak link in state sales tax administration, and the object of the Streamlined Sales Tax Project is to shore up the weak link as much as possible.

Senator Oleen noted that there are people who are honest and willing to report purchases on which compensating use tax is due. She asked if the Committee had an interest in suggesting the insertion of a line item on the state income tax form to report compensating use tax due. Senator Corbin noted that the suggestion has been made before. However, adding a line item makes the form lengthy. Mr. Ciardullo commented that either a line item or a separate form could be used to report compensating use tax due.

The meeting was adjourned at 12:00 p.m.

The next meeting is scheduled for March 22, 2004.