

Approved: February 3, 1994
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:08 a.m. on February 2, 1994 in Room 519-S of the Capitol.

Members present: Senator Langworthy, Senator Tiahrt, Senator Martin, Senator Bond, Senator Corbin, Senator Feleciano Jr., Senator Hardenburger, Senator Lee, Senator Reynolds, Senator Sallee, Senator Wisdom

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Bill Edds, Revisor of Statutes
Don Hayward, Revisor of Statutes
Elizabeth Carlson, Committee Secretary

Conferees appearing before the committee: Nancy Parrish, Secretary, Department of Revenue

Others attending: See attached list

APPROVAL OF MINUTES

Senator Bond moved to approve the minutes of February 1, 1994. The motion was seconded by Senator Tiahrt. The motion carried.

INTRODUCTION OF BILLS

Gordon Garrett, Commercial Property Association of Kansas, requested the introduction of a bill which would amend the constitution to reduce the assessment rate on commercial and industrial property from 25 percent to 15 percent over a 10 year period.

Senator Bond moved to introduce this bill. The motion was seconded by Senator Tiahrt. The motion carried.

COMPENSATING TAX AND MAIL ORDER SALES

Nancy Parrish, Secretary, Department of Revenue, appeared before the committee to discuss sales tax on mail order sales. (Attachment 1) She said it is extremely difficult to collect sales tax on mail orders. Some out-of-state retailers have voluntarily registered to collect and remit Kansas sales (use) tax. In 1990 the revenue loss of tax dollars to the state was estimated to be 20 to 30 million dollars per year. Consumers who make large purchases in dollar amounts pay the majority of use tax. Automobiles purchased out-of-state pay the compensating use tax when they register their vehicles. The retailer has the obligation to collect sales tax from the consumer, but the consumer may also have to pay the use tax, if it has not been collected by the retailer. Secretary Parrish said there is legislation being introduced in the U.S. Congress which would allow for the states to collect the sales (use) tax on mail orders. She recommended the committee lobby their congressional representatives to pass this legislation.

Several members of the committee said they thought the state should be aggressive in trying to collect this sales tax on mail orders. Secretary Parrish said there are a number of national associations trying to work on this problem and with the proposed legislation maybe something will be done.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:08 a.m. on February 2, 1994.

SALES TAX ON GROSS RECEIPTS RECEIVED FROM FEES AND CHARGES BY PUBLIC AND PRIVATE CLUBS, DRINKING ESTABLISHMENTS, ORGANIZATIONS AND BUSINESSES FOR PARTICIPATION IN SPORTS, GAMES AND OTHER RECREATIONAL ACTIVITIES

Secretary Parrish was asked to comment on complaints received by members of the committee concerning sales tax charged non-profit youth sports organizations. She said fees charged for participation in a sport, game or recreational activity, such as league fees or tournament fees, are subject to the Kansas retailers' sales tax. Also Kansas statutes impose a sales tax "upon the gross receipts from the sale of admissions to any place providing amusement, entertainment or recreation services". Fees charged for admission to sports, games or recreational activities (gate receipts) would be subject to the retailers' sales tax. The sale of food, soft drinks, candy, t-shirts, hats, balls, etc., are subject to this tax. There are approximately 46 exemptions in the statutes which are listed in KSA 79-3606. She said, however, she understands how there is confusion about the tax.

The meeting adjourned at 12:00 noon.

The next meeting is scheduled for February 3, 1994.

DATE: Feb 2, 1994

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STATE OF KANSAS

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Department of Revenue
Office of the Secretary

MEMORANDUM

TO: The Honorable Audrey Langworthy, Chairperson
Senate Committee on Assessment and Taxation

FROM: Nancy Parrish
Secretary of Revenue

DATE: February 2, 1994

RE: Compensating Tax and Mail Order Sales

Thank you for the opportunity to update the committee on the mail order sales issue.

Compensating Use Tax Background

The "Kansas Compensating tax", K.S.A. 79-3701 et. seq. is generally referred to as the compensating use tax. Use taxes apply to the use, storage or consumption of any item of tangible personal property. The compensating use tax is at the same rate as the state sales tax rate. Exemptions from the compensating use tax include any articles taxed in another state and any items which would not have been subject to tax under the retailers' sales tax. There is no provision in Kansas law for local option compensating use taxes.

The majority of the use tax that is paid in the State of Kansas is remitted by consumers. Businesses that buy furniture, computers and equipment for their offices routinely remit this tax. In addition, individuals that purchase automobiles out-of-state pay the compensating use tax when

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they register their vehicle. Approximately 50 million dollars collected annually from consumers. However, collecting the use tax from individuals who make millions of dollars of small mail-order purchases each year is extremely difficult.

This issue of mail order sales is a concern to small business and their representative groups because of the loss of retail sales in Kansas which is estimated to be well in excess of a half-billion dollars a year. By not collecting sales tax, out-of-state firms can undercut the Kansas retailers' prices by the sales tax rate, in some areas nearly 7% when local option taxes are included.

The loss of in-state sales is increasing. In 1986, catalog sales alone rose at a rate three times greater than all other retail sales.

In 1990 the revenue loss of tax dollars to the state was estimated to be 20 to 30 million dollars per year.

Collection efforts can be grouped under the following strategies:

1) Increase voluntary compliance of consumers remitting the tax. Some states have initiated programs to increase voluntary compliance of payment of the compensating use tax. Those programs include public education about the compensating tax laws, inclusion of compensating use tax forms with the individual income tax mailings, and addition of a separate line on income tax forms for compensating use tax. Other states have subpoenaed records of mail order houses in order to identify the purchasers within their states. The Department of Revenue currently is reviewing the efforts and the results of those efforts in other states.

2) Increase voluntary compliance of retailer's remitting the tax.

As part of the Bilateral Tax Agreement that the State of Kansas has entered into with some surrounding midwest states, some out-of-state retailers' have voluntarily registered to collect and remit Kansas (use) tax. In 1992, seven out-of-state retailers' registered with Kansas and remitted \$400,283.00. In 1993, fifteen out-of-state retailers' registered with Kansas and remitted \$203,366.00.

Voluntary Tax Compliance agreements between Kansas and ten independent marketers has resulted in collection of \$483,875.11. A number of other voluntary compliance agreements were signed prior to 1992, but I don't have the exact numbers. Collections of Retailers' Compensating Use Tax as a consequence of Kansas involvement in the

ultistate T. ommission's NEXUS program, has netted a dditional \$82,799.00.

In summary, a total of \$1,252,166.24 in Kansas (use) tax has been remitted to the State of Kansas in calendar years 1992 and 1993, due to the State of Kansas's efforts in getting retailers to voluntarily remit the compensating use tax.

3) Pass federal legislation to require out-of-state retailers to collect and remit the compensating use tax.

Quill, a recent U.S. Supreme Court Case, cleared the way for Congress to enact a law requiring out-of-state retailers to collect compensating use tax. The court in Quill ruled that there is no constitutional bar based on the due process clause, but instead there is a commerce clause problem which can be rectified by passage of federal legislation. Absent such legislation, the Supreme Court ruled that a state cannot require a firm to collect sales tax unless the firm has a physical presence or "nexus" with the State. In 1990, the Kansas legislature expanded the compensating use statutory definition of retailers in order for the state to be positioned to collect compensating use tax from retailers if the courts or Congress provided the authority for states to require collection and remittance by out-of-state retailers. Since these interstate sales activities constitute interstate commerce, Congress is the only body that has the authority to require collection of taxes on interstate sales. A bill has been drafted to require the collection and remittance of use taxes by retailers and will be introduced soon in the U.S. Senate by Senator Dale Bumpers along with other co-sponsors. A synopsis of that bill is attached to my testimony.

BUMPERS BILL
OUTLINE OF
THE TAX FAIRNESS FOR MAIN STREET BUSINESS ACT OF 1994

*Effect: Will allow State and local jurisdictions to require out-of-state companies to collect sales taxes on tangible personal property sold to residents of the State or local jurisdiction. Requirements:

*The company must collect or conduct business in the State or local jurisdiction.

*The company must deliver the tangible personal property into the State or local jurisdiction.

*De Minimus Provision: A company will be exempt if its nationwide sales are less than \$3 million. The exemption will not apply, however, in any State where the company's sales exceed \$100,000.

*Standard Local Sales Tax Option: If local sales taxes vary within a State, companies will have the option of paying all applicable local tax rates or a standard local rate called the "in-lieu tax."

*Distribution of Local Sales Taxes: States must distribute local taxes collected pursuant to this law proportionate to the distribution of local taxes collected separate from this law i.e., local taxes collected from in-state companies. Distributions must occur at least once every calendar quarter.

*Filing Frequency: States may not require out-of-state companies to file tax returns more than once every calendar quarter.

*Toll -Free Information Service: States must establish a toll-free information service to provide out-of-state companies with necessary information and forms.