

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on January 26, 2007 in Room 519-S of the Capitol.

All members were present except:
Representative Dillmore

Committee staff present:
Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Richard Cram, Department of Revenue
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:
Bruce Larkin, KDOR
Marlee Carpenter, KS Chamber of Commerce

Others attending:
See attached list.

The Chairman called for bill introductions.

Representative Wilk made a motion to introduce a House Concurrent Resolution in support of National Bio-Agro Defense Facility (NBAF). Representative Menghini seconded the motion. The motion carried.

Representative Wilk made a motion to introduce legislation that would designate a specific regulatory commission to work with the NBAF project. Representative Owens seconded the motion. The motion carried.

HB 2171 - Requirements, procedures and penalties related to sales tax refund claims

The Chairman opened the public hearing and invited Bruce Larkin to the podium to explain the bill as well as answer questions as a proponent of the bill.

Bruce Larkin, Kansas Department of Revenue, introduced the Department staff in attendance - Chief Counsel Jim Bartel, Richard Cram, Director, Policy and Research, Steve Brunkan, Policy and Research. He said the bill was introduced at the request of KDOR to modify sales tax refund statutes, codify existing rules, eliminate administration complications, and reduce administrative costs and burdensome backlogs and litigation. The bill also imposes a penalty for filing for duplicate refund requests (Attachment 1).

He briefed the Committee on six points of the sales tax refund proposal.

- Clarifies that three-year statute of limitations for refund claims starts on the due date of the return for the reporting period that includes the transaction on which the refund claim is based.
- Clarifies that interest does not start to accrue until a complete and fully documented refund claim is filed, except no interest accrues if the claim is paid within 120 days after the filing.
- Requires that consumers must seek their refunds from the retailer instead of the Department, with limited exceptions.
- Defines the information and documentation requirements that must be met for a refund application to be considered a properly filed refund claim.
- Provides that a refund application will initially be reviewed for determination of whether it meets the informational and documentation requirements to be considered a properly filed refund claim.

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on January 26, 2007 in Room 519-S of the Capitol.

- If it does not, the application will be returned, and the claimant advised of administrative appeals rights. Once a complete refund claim is filed, it will be reviewed on its merits as to whether a refund is due. If it is denied the claimant will be advised of administrative appeal rights.
- Persons submitting refund claims for sales or use tax that was never collected by the retailer and remitted to the Department, or that the retailer had already refunded to the claimant will be subject to a penalty of 50% of the amount of tax sought to be refunded.

The Chairman requested that staff identify what section of the bill each of the six points addressed and create a table that would list current law and the changes.

Marlee Carpenter, KS Chamber of Commerce, appeared in opposition to **HB 2171**. She expressed concern in New Section 5, as it provides that a consumer cannot apply to DOR for a sales tax refund claim unless the retailer in which they paid the sales tax to is no longer in business, and is unavailable to refund the tax. She gave several reasons why they believe this is not good policy and why New Section 5 violates principal/agent duty. She urged careful consideration of the bill (Attachment 2).

The Chairman closed the public hearing on **HB 2171**.

Chairman Wilk turned everyone's attention back to **HB 2018**, a bill that would increase the BOTA from three to five members. Discussion followed regarding options pertaining to the recommendation from Rebecca Crotty, Chairperson, BOTA. He said that leadership would discuss the options, and he invited members who would like to serve on a possible sub-committee to advise someone in leadership.

The meeting was adjourned at 10:25 a.m. The next meeting is January 30, 2007.

January 26, 2007
House Committee on Taxation
Testimony on House Bill 2171

Chairman Wilk, members of the committee,

The Department of Revenue appreciates the opportunity to testify on House Bill 2171. This bill was introduced at the request of the department to modify sales tax refund statutes, codify existing rules, eliminate administrative complications, and reduce administrative costs and burdensome backlogs and litigation.. House Bill 2171 also imposes a penalty for filing for duplicate refund requests. Details are as follows:

KDOR Sales Tax Refund Proposal--Summary

1. Clarifies that three-year the statute of limitations for refund claims starts on the due date of the return for the reporting period that includes the transaction on which the refund claim is based. The statute of limitations is not tolled until a complete and fully documented refund claim is filed. The postmark date on the refund claim determines its filing date (or if that date is illegible, the date 3 days prior to the claim being received by the Department is presumed to be the filing date).
2. Clarifies that interest does not start to accrue until a complete and fully documented refund claim is filed, except that no interest accrues if the claim is paid within 120 days after the filing of a complete and fully documented refund claim.
3. Requires that consumers must seek their refunds from the retailer, who in turn will file the refund claim (subject to the documentation requirements) with the Department. Limits the filing of consumer-filed refund claims directly with the Department only to situations where the consumer paid the tax directly to the Department or the retailer was no longer in business at the time the consumer sought the refund.
4. Defines the information and documentation requirements that must be met for a refund application to be considered a properly filed refund claim that tolls the statute of limitations and begins the accrual of interest.
5. Provides that a refund application will initially be reviewed for a determination of whether it meets the informational and documentation requirements to be considered a properly filed refund claim. If it does not, the refund application will be returned to the claimant, who will be advised of administrative appeals rights that are limited to consideration of whether what was originally filed was a complete refund claim or not. Once a complete, properly documented and timely refund claim is filed, it will be reviewed on its merits for a determination as to whether a refund is due. If a complete and properly filed refund claim is denied, the

claimant will be advised of administrative appeal rights for a review of the decision to deny the claim on its merits.

6. Persons submitting refund claims for sales or use tax that was never collected by the retailer and remitted to the Department, or that the retailer had already refunded to the claimant, will be subject to a penalty of 50% of the amount of tax sought to be refunded.

Currently companies that are utilizing the direct refund statutes have other options that would reduce their costs of applying for , or hiring consultants to apply for sales tax refunds. By utilizing the statutes allowing exemption certificates, companies can provide an exemption to the retailers and not be charged the sales tax. Passage of this bill would encourage companies to utilize exemption certificates to avoid sales tax charges up front and eliminate the need to file with the department for a refund. This would save the business money by not having to apply for the refund to the state, and it would reduce administrative staff over time that would be needed to process refund requests.

Once again the department would encourage your favorable consideration of House Bill 2171 as we feel that the long term effects will be to promote efficiencies, reduce backlogs, and reduce costly litigation.

Legislative Testimony

HB 2171

January 26, 2007

**Testimony before the Kansas House Taxation Committee
By Marlee Carpenter, Vice President of Government Affairs**

Representative Wilk and members of the committee;

The Kansas Chamber of Commerce represents over 10,000 small, medium and large businesses from all corners of the state. In addition, we represent the state's retail members. We are here today to express some concerns we have with HB 2171.

New Section 5 has language that causes us concerns. The new section provides that a consumer cannot apply to the Department of Revenue for a sales tax refund claim unless the retailer in which they paid the sales tax to is no longer in business and is unavailable to refund the tax. If the retailer is still in business, they must seek the refund claim from the retailer.

What if the retailer refuses to cooperate? The new provisions require the consumer to sue the retailer. Not many consumers/businesses are willing to sue their suppliers or vendors. This provision puts retailers in an untenable position of defending the state general fund by requiring the retailer to amend its returns or defend itself in court. If a retailer chooses not to cooperate with a consumer refund claim, they could be the subject of a lawsuit for sales tax money that they have already remitted to the Kansas Department of Revenue.

Finally, we believe that New Section 5 violates principal/agent duty. The retailer is the state's agent for collecting tax. The state or the principal cannot absolve itself of liability for the actions of its agent.

We urge the committee's careful consideration of HB 2171. Thank you for your time and consideration of this issue.



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