

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 3:42 p.m. on March 9, 2011, in Room 783 of the Docking State Office Building.

All members were present except:

Representative Donohoe-excused

Committee staff present:

Gordon Self, Office of the Revisor of Statutes

Scott Wells, Office of the Revisor of Statutes

Chris Courtwright, Kansas Legislative Research Department

Michael Wales, Kansas Legislative Research Department

Marla Morris, Committee Assistant

Allen Jeffus, Office Assistant

Conferees appearing before the Committee:

Richard Cram, Kansas Department of Revenue

Jill Wolters, Office of the Revisor of Statutes

Kent Eckles, The Kansas Chamber

Daniel Murray, National Federation of Independent Business

Others attending:

See attached list.

Bill Introductions:

Representative Worley requested withdrawal of the February 9, 2011 bill request concerning Machinery and Equipment, and requested introduction of a bill on community improvement districts. Representative Carlson moved to introduce a bill on community improvement districts. Representative Frownfelter seconded the motion. The motion carried unanimously.

Chairman Carlson opened the hearing on:

SB 212 - Annual report by secretary of revenue of abatements of tax liability

Gordon Self, Office of the Revisor of Statutes briefed the Committee on **SB 212**. The bill was introduced in the Senate Committee on Federal and State Affairs at the request of the Kansas Department of Revenue. The bill would amend language concerning the public availability of information concerning tax abatement records. He stood for questions.

Chairman Carlson directed the Committee to the fiscal note on **SB 212**, prepared by Richard Kram, Kansas Department of Revenue (KDOR), (Attachment 1).

Richard Cram, KDOR, introduced General Counsel, David Clauser, and Staff Attorneys Robert Challquist and Randy Wharton, who will be available to answer questions, if necessary. Mr. Cram defined the recommended amendments and the need to correct what the department believes to have been oversights in the original legislation. He stated, passage of the retroactive legislation may eliminate the risk of legal issues from a request for old records that should have been confidential. He stood for questions.

Chairman Carlson closed the hearing on **SB 212** and began discussion and action on **SB 212**:

Representative Dillmore moved to pass SB 212 favorable, and due to the non-controversial nature of the bill, be placed on the consent calendar. Representative Wolfe-Moore seconded the motion, and the motion carried unanimously.

Chairman Carlson opened the hearing on:

HCR 5011-To amend Article 11 of the Constitution of the State of Kansas by adding a new section thereto, concerning a contingency reserve fund and debt prepayment fund in the state treasury

CONTINUATION SHEET

The minutes of the House Taxation Committee at 3:42 p.m. on March 9, 2011, in Room 783 of the Docking State Office Building.

Jill Wolters, Office of the Revisor of Statutes, briefed the Committee on **HCR 5011**. Adoption of the resolution would add a new section 14, to article 11 of the Kansas Constitution establishing a contingency reserve fund and debt prepayment fund in the state treasury on July 1, 2013. A technical amendment would need to be addressed if the resolution is adopted, correcting the word 'services' on page 1, line 29 to 'serviced' (**Attachment 2**). She stood for questions.

Kent Eckles, The Kansas Chamber, spoke in support of **HCR 5011**. Kansas is one of three states without rainy day fund or budget stabilization fund, the Chamber feels it is good to save for a rainy day, and **HCR 5011** is a good option. The Kansas Chamber urged the Committee to reform the state's tax code by adopting similar "trigger mechanisms," which would tie future revenue growth to reductions in the state's individual and corporate income taxes (**Attachment 3**). He stood for questions.

Daniel Murray, National Federation of Independent Business, supports **HCR 5011**, and feels that the state should have a "reserve". He points out that Kansas has a higher debt burden per person of \$1,140, than surrounding states, with Nebraska's burden the lowest at \$15/person and Missouri the closest at \$780/per person (**Attachment 4**). He stood for questions.

Chairman Carlson closed the hearing on **HCR 5011**.

Discussion and action on:

HCR 5017 - Constitutional amendment authorizing the legislature to provide for classification and taxation of watercraft

Representative Schwartz moved **HCR 5011** favorable for passage. The motion was seconded by Representative Gatewood, and the motion carried unanimously.

The next meeting is scheduled for 3:30 p.m., March 10, 2011, in Room 783 of the Docking State Office Building for the purpose of hearing:

SB 61 - Increasing income tax credit for contributions made by program contributors under the individual development account program

SB 1 - concerning consumer transactions; relating to the Kansas retailers'; sales tax act; requiring the cumulative rate to be printed on electronically printed sales receipts

HB 2266 - Community improvement districts; notice of sales tax rate

The meeting was adjourned at 4:57 p.m.

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[illegible]

Marla Morris

From: Richard.Cram@kdor.ks.gov
Sent: Monday, March 07, 2011 8:17 AM
To: Chris Courtwright; Marla Morris; Gordon Self; sean.tomb@budget.ks.gov
Subject: Fiscal Note SB 212
Attachments: pic12443.jpg

----- Forwarded by Richard Cram/Revenue/KDOR on 03/07/2011 08:15 AM -----

2011 Senate Bill 212f Fiscal Note
Amended by Senate Committee of the Whole

Fiscal Note Development

Bill Assigned: 02/28/2011

Responses Due: 03/02/2011

Note Due to Budget: 03/03/2011

Status: Sent to Budget

Prepared By: Steve A Stotts

Preliminary Completed: 02/28/2011

Reviewed by P&R: 02/28/2011

Approved by Secretary: 02/28/2011

Sent to Budget: 02/28/2011

Fiscal Impact: Passage of this bill will not impact state
general fund revenue.

Administrative Impact: None.

M E M O R A N D U M

To:

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To:
Division of Budget

From: Kansas Department of Revenue

Date: 02/28/2011

Subject: Senate Bill 212
Amended by Senate Committee of the Whole

Brief of Bill

Senate Bill 212, as amended by senate committee of the whole, changes the effective date of the bill to publication in the Kansas register rather than publication in the statute book.

Section one amends K.S.A. 79-3233b to require the secretary of revenue to make the annual abatement report filed with the secretary of state, division of post audit and the attorney general available for public inspection upon written request.

The annual abatement report identifies the taxpayer, summarizes issues and reasons for abatement and state the amount of liability that was abated for each abatement of \$5,000 or more.

The senate amendment adds language to clarify that the provisions of the bill are effective retroactively to July 1, 1999.

The effective date of this bill is on publication in the Kansas register.

Fiscal Impact

Passage of this bill will not impact state general fund revenue.

Administrative Impact

None.

Administrative Problems and Comments

Taxpayer/Customer Impact

Currently the department is required to make an annual report to the secretary of state, legislative post audit of the legislature and the attorney general of abatements of tax liability \$5,000 or greater. The information required in the annual report is the taxpayer's name, summary of the issues and the reason for the abatement, and the amount of liability that was abated.

The secretary is also currently required to make the record of any abatement available for public inspection upon written request. This record can contain confidential personal taxpayer information that is not required to be included in the annual report. This confidential taxpayer information can include, social security numbers of the taxpayer and dependents, credit card information, insurance information, medical records of the taxpayer

and the taxpayer's dependents, personal financial information of the taxpayer, personal communications of the taxpayer with the department and financial institutions, personal communications with the taxpayer's employer, information from the IRS, investment and retirement account information, and other confidential information the department takes into account when approving an abatement.

In the last seven years, nearly 6,500 abatements of \$5,000 or greater have been approved. Currently, under this statute, all the personal and confidential information of these taxpayers would be available to the public. There are also over 14,000 abatement records from abatements that are for less than \$5,000 and are not included in the annual report. These would also be open to the public under this statute.

Although this statute was enacted in 1999, the Department has never had a request for access to abatement records under this provision until recently, when one request was made for all abatement records since 2004, which would involve making available to the requestor over 12,000 tax abatement records, including highly confidential and private information. In responding to this records request, the Department first realized the potentially far reaching and invasive impact of this statute and the urgent need for it to be amended to prohibit disclosure of confidential information. Otherwise, the Department faces the dilemma of complying with this overly broad and burdensome request, in possible violation of other state and federal confidentiality laws, or denying the request and risking the litigation and potential exposure to attorneys fees that could involve.

Legal Impact

Taxpayer abatement records are confidential, pursuant to K.S.A. 79-3234.

K.S.A. 79-3233b(b) needs to be clarified to make clear that there should be no public access to these records. Only the report concerning these abatements, which is a public record, should be made publicly available.

This clarification must be given retroactive effect back to the date of enactment of this provision, 1999, so that no public access will be allowed to these confidential taxpayer abatement records.

SB 212 was drafted to correct what the department believes was an oversight in the original legislation. The secretary maintains a record of each abatement over \$5,000 which includes all the supporting evidence provided by the taxpayer. Because of the varying reasons why a taxpayer can submit an abatement request, supporting evidence ranges from highly private medical and prescription records to social security and death benefits, W-2 wage information, banking records, social security numbers, etc. Often records of third parties are included in a taxpayer request and even though the taxpayer signs a waiver of confidentiality with the Department for tax purposes, third parties do not sign a waiver, may not be aware that the records are being provided and are certainly not aware that the records may be available for public inspection.

The secretary prepares and files an annual report with the secretary of state, legislative post audit and the attorney general that summarizes all abatements over \$5,000. The report acts as an accounting of all abatements approved by the secretary from the previous year. The report identifies the taxpayer, reasons for the abatement and the amount of liability abated, but does not contain the supporting documentation provided by the taxpayer.

The current wording in the statute allows for public inspection of the record notwithstanding other provisions of law. As noted above the secretary receives many types of documents to support the abatement of tax liability. With the statute referring to public inspection of the record and the wording "[a]ny other provision of law notwithstanding" the Department is concerned that the current statute does not contemplate other confidentiality statutes both federal and state. Particularly when dealing with the sensitive nature of third party

documents the statute needs to protect the information received but allow for the public to be informed when a taxpayer's liability is abated.

Approved By:

(Embedded image moved to file: pic31101.jpg) Nick Jordan Secretary of Revenue

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MEMORANDUM

To: House Committee on Taxation
From: Jill Ann Wolters, Senior Assistant Revisor
Date: March 9, 2011
Subject: House Concurrent Resolution No. 5011, contingency reserve fund and debt prepayment fund

House Concurrent Resolution No. (HCR) 5011 adds a new section 14, to article 11 of the Kansas constitution establishing a contingency reserve fund and the debt prepayment fund in the state treasury on July 1, 2013.

HCR 5011 would:

(1) Require that annually, when state tax receipts for a fiscal year increase by more than 3% over the state tax receipts for the preceding fiscal year, up to the next 1% of state tax receipts collected in excess of 3% shall be deposited in the contingency reserve fund. Nothing in the amendment would require state tax receipts to be deposited in the contingency reserve fund when the contingency reserve fund balance exceeds 15% of the preceding fiscal year's state tax receipts.

(2) Require that annually, when state tax receipts for a fiscal year increase by more than 4% over the state tax receipts for the preceding fiscal year, up to the next .5% of state tax receipts collected in excess of 4% shall be deposited in the debt prepayment fund. Nothing in the amendment would require state tax receipts to be deposited in the debt prepayment fund when the debt prepayment fund balance exceeds 15% of the preceding fiscal year's total amount of principal of bonded indebtedness serviced by appropriations from the state general fund.

(3) Allow the legislature, by law, to provide for additional amounts of state tax receipts to be deposited in the contingency reserve fund and the debt prepayment fund.

(4) Allow, by a separate act of the legislature, withdrawals from the contingency reserve fund to occur:

(A) In the current fiscal only when the current fiscal year's estimated state tax receipts are less than the amount of actual state tax receipts collected or otherwise received in the preceding fiscal year. The amount withdrawn shall not exceed the difference between the current fiscal year's estimated state tax receipts and the amount of actual state tax receipts collected in the preceding fiscal year except that such difference shall be reduced by the amount of the current fiscal year's estimated state tax receipts not collected as a result of any kind of tax reduction legislation enacted by the legislature and approved by the governor in the current or preceding fiscal year; or

(B) in the ensuing fiscal year only when the ensuing fiscal year's estimated state tax receipts are less than the amount of estimated state tax receipts in the current fiscal

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year. The amount withdrawn shall not exceed the difference between the ensuing fiscal year's estimated state tax receipts and the amount of estimated state tax receipts in the current fiscal year except that such difference shall be reduced by the amount of the ensuing fiscal year's estimated state tax receipts not collected as a result of any kind of tax reduction legislation enacted by the legislature and approved by the governor in the current or preceding fiscal year.

The attorney general is responsible for determining whether tax reduction legislation was enacted and approved and the governor is responsible for certifying the amount of such reduction.

(5) Allow, by a separate act of the legislature, withdrawals from the debt prepayment fund only to provide for calling and redeeming selected bonds for which debt service is paid by appropriations from the state general fund on or after their first optional redemption date and prior to maturity. The governor shall be responsible for determining and selecting which bonds will produce the greatest debt service savings to the state general fund, and the attorney general shall be responsible for certifying that the selected bonds are available for optional redemption.

(6) Provide that amounts in the contingency reserve fund and the debt prepayment fund may be invested as provided by law and the earnings retained in the contingency reserve fund and the debt prepayment fund.

(7) Define "state tax receipts" to mean receipts from any state income tax, sales tax, compensating use tax or other excise tax or tax in the nature of an excise tax, or estate or inheritance tax, or tax in the nature of an estate or inheritance tax, but shall not include receipts from any property tax, or tax in the nature of a property tax, or any tax on motor fuels.

The resolution, if approved by two-thirds of the members of the House and Senate, would be submitted to the electors of the state at the general election in the year 2012 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.

There is a technical amendment that will need to be addressed if this resolution is adopted. On page 1, line 29 'services' should be 'serviced'.

**Testimony before the House Taxation Committee
HCR 5011 – Establishing Contingency Reserve & Debt Prepayment Funds
Presented by J. Kent Eckles, Vice President of Government Affairs**

Wednesday, March 9th, 2011

The Kansas Chamber of Commerce appreciates the opportunity to present testimony in favor of HCR 5011, which would establish contingency reserve and debt prepayment funds.

Kansas is one of only three states without any type of budget stabilization or “rainy day” fund. While each of the other 47 states’ budget stabilization funds differ in structure, their underlying functions all possess a common denominator: when capacity to generate revenue is strong, the state saves all or some of the surplus in a permanent fund for use when revenue generation is weak (economic downturns).

With our ending balance law often being waived via proviso in appropriations bills, HCR 5011 allows the citizens of Kansas to decide whether our Constitution should provide for a contingency reserve funds to help taxpayers and government leaders better withstand shortfalls in tax receipts.

With constitutional contingency reserve and debt prepayment funds, Kansas would have a third option when dealing with painful budget deficits – as opposed to only two, which are cutting spending or increasing taxes. States that have the luxury of drawing down reserve funds during economic downturns are sure to have a more stable fiscal structure over time because they can balance budgets without having to constantly change their tax structure and shift spending priorities, both of which Kansas has recently done via tax increases, allotments and sweeps of fee funded agencies.

While we support this constitutional amendment, we would also urge the committee to reform the state’s tax code by adopting similar “trigger mechanisms,” which would tie future revenue growth to reductions in the state’s individual and corporate income taxes. As previously stated, it makes sense to save when times are good, but placing excess revenues in reserve funds will not have as positive effect on economic growth as reductions in income taxes would.

We urge the Committee to pass favorably HCR 5011.

The Kansas Chamber, with headquarters in Topeka, Kansas, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium, and large employers all across Kansas. Please contact me directly if you have any questions regarding this testimony.





The Voice of Small Business®

Testimony in Support of HCR 5011

Mr. Daniel Murray

Kansas State Director, National Federation of Independent Business

House Taxation Committee

Wednesday, March 9, 2011

Good afternoon Chairman Carlson and members of the Committee. My name is Dan Murray and I am the State Director of the National Federation of Independent Business/Kansas. NFIB/KS is the leading small business organization representing small and independent businesses. A nonprofit, nonpartisan organization founded in 1943, NFIB/KS represents the consensus views of its over 4,100 members in Kansas. NFIB/Kansas supports HCR 5011.

Kansas is one of a handful of states that does not have some "rainy day" fund or mechanism in place. In fiscal 2008, forty-seven states and the District of Columbia maintained rainy day funds. Only Kansas, Arkansas, and Montana lacked such funds. While not all funds are similar or perfect, it's time that Kansas joins the rest of the country. A properly managed contingency reserve fund, just like a family's emergency savings account, will help Kansas fund essential services during times of economic crisis. Thus, we hope, the state will not feel the need to increase taxes on our state's job creators when they can least afford a tax hike.

Second, our members believe strongly that the state must reduce the debt burden. HCR 5011 will direct funds to debt prepayment, reducing the Kansas debt. In 2010 Kansas had a debt burden per person of \$1,140. Our neighbor states have fared much better: Nebraska is \$15/person; Iowa is \$73/person; Colorado is \$400/person; Oklahoma is \$570/person; and Missouri is \$780/person.¹ By paying off debt more quickly, Kansas will have more resources available to fund essential services and reduce the tax burden on small businesses.

Finally, we believe it's important to note that Kansas must not store all excess receipts in a contingency reserve fund. Reducing the tax burden, both the individual and corporate tax rate, remains a priority for NFIB/Kansas. Improving the tax climate in Kansas is essential to job creation. Thus, we are excited to learn of a tax proposal which will pin individual and corporate tax rate reductions to positive state growth. We believe this committee should explore options that tie HCR 5011 with any proposal to reduce income taxes.

Again, NFIB/Kansas supports HCR 5011. Thank you for the opportunity to appear.

¹Tami Luhby, "States Go Deeper in Debt": CNNMoney.com at http://money.cnn.com/2010/07/30/news/economy/state_debt_levels/index.htm data from Moody's.

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