

SESSION OF 2010

**SUPPLEMENTAL NOTE ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 427**

As Recommended by House Committee on
Taxation

Brief*

House Sub. for SB 427 would provide a tax amnesty under certain circumstances to forgive penalties and interest assessed on certain unpaid taxes if the outstanding liability is paid in full between September 1, 2010, and December 31, 2010; or pursuant to a payment plan by June 30, 2011. Included in the amnesty provisions would be financial institution privilege taxes, estate taxes, income taxes, withholding and estimated taxes, cigarette and tobacco products taxes, sales and use taxes, liquor enforcement taxes, liquor drink taxes, and severance taxes.

The amnesty would be applicable for liabilities for tax periods ending on or before December 31, 2009.

The amnesty provisions would not apply if any of the following has occurred on or after September 1, 2010:

- The taxpayer has received notice of the commencement of an audit;
- An audit is in progress;
- The taxpayer has received notice of an assessment pursuant to KSA 79-2971 or 79-3643;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The taxpayer has received notice of a proposed or estimated assessment or notice of assessment as the result of an audit;
- The time to appeal administratively an issued assessment has not yet expired; or
- An assessment resulting from an audit, or any portion of such assessment, is pending in the administrative appeals process before the Secretary of Revenue, Court of Tax Appeals, or the judicial review process.

Amnesty also would not apply to any matter that is the subject of an assessment, or any portion of an assessment, which has been affirmed by a reviewing state or federal district or appellate court.

Amnesty further would not apply to any party to any criminal investigation or to any civil or criminal litigation that is pending in any court for nonpayment, delinquency, or fraud in relation to any tax imposed by the State of Kansas.

Amnesty could be granted only to taxpayers who within the amnesty period have properly filed tax returns for each taxable period for which the amnesty is requested.

The Secretary of Revenue would be required to develop application forms for the amnesty.

Taxpayers electing to participate in the amnesty would be making “an express and absolute relinquishment of all administrative and judicial rights of appeal” with respect to the affected liability. Amnesty payments would be ineligible for refunds or credits. Any payments of penalties or interest made prior to September 1, 2010, would be ineligible for the amnesty.

For tax returns for which amnesty has been requested, nothing in the legislation would be interpreted to prohibit adjustments to such returns resulting from audits.

Finally, fraud or intentional misrepresentation of a material fact in connection with an amnesty application would void the application and any waiver of penalties and interest; and discovery of fraud relating to the underlying tax liability would void the abatement of any liability pursuant to the amnesty.

Background

SB 427, as amended by the Senate Committee of the Whole, would have revised a number of different tax statutes to specifically provide that the definition of the term “willfully” relative to persons who willfully fail to collect state taxes would have the same meaning such term has for federal tax purposes pursuant to the Internal Revenue Code. It also would have authorized taxing subdivisions to sell tax receivables to public and private parties.

The House Taxation Committee on March 18 voted to remove that version of the bill’s contents in their entirety, insert the aforementioned amnesty provisions, and recommend that a substitute bill be created. The amnesty provisions generally are similar to those found in HB 2740.

The amnesty proposal is patterned after similar legislation enacted in 2003. The latest information available from the Department of Revenue has indicated that the bill would necessitate an additional \$0.625 million in FY 2011 administrative costs and would be expected to have the following impact on receipts:

(\$ in millions)

FY 2011	\$ 7.0
FY 2012	(8.0)
FY 2013	(3.0)
FY 2014	---
FY 2015	---
5-yr total	(4.0)