

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson Senator Audrey Langworthy at 11:10 a.m. on March 14, 2000, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Shirley Sicilian, Kansas Department of Revenue

Others attending: See attached list.

The minutes of March 8 and 9, 2000, were approved.

Integrated plant theory relative to sales tax exemption for manufacturing machinery and equipment

Senator Langworthy reminded the Committee that a bill regarding the integrated plant theory passed the House in the 1999 Session and that Shirley Sicilian, Kansas Department of Revenue, presented an informational briefing to the Committee on February 1, 2000. She called upon Ms. Sicilian to refresh the Committee members' memories and to describe the changes necessary to help business and economic development and at the same time protect the integrity of the State General Fund. Copies of **HB 2011** as amended to address the issue had been distributed to the Committee. (Attachment 1)

Ms. Sicilian explained the following proposed amendments to **HB 2011**:

- The first set of amendments to the bill, found on pages 12 through 19, would move Kansas from a state that employs the Ohio Rule plus some integrated plant characteristics to a pure integrated plant rule. The specific language, which first appeared three sessions ago, was proposed by the Governor. The Department, the industry, and the Governor's office worked together to modify that language. An interim committee then passed out the modified language. That language was heard during the 1999 Legislative Session and in the current session. This fiscal note for this portion of the bill is \$4.3 million.
- The bill would eliminate the statute of limitations on filing for sales and use tax refunds based upon the provisions of K.S.A. 1999 Supp. 79-3606(kk). Ms. Sicilian noted that, technically, the statute of limitations is a remedy, not a right, allowed by the Legislature, and it can be removed.
- The bill would also eliminate refunds based upon the provisions in subsection (n) pursuant to the finding by the Kansas Court of Appeals in the Water District No. 1 of Johnson County case for tax paid prior to the effective date of the bill.

Ms. Sicilian noted that the provision for the elimination of refunds under (kk) has a positive fiscal impact. The provision for the elimination of refunds under (kk) would have a positive fiscal impact of \$7 million because the Department does routinely grant refunds. She explained that the cut off date for refunds under both (kk) and (n) is the date of the court case, August 13, 1999.

Senator Lee asked how the bill places Kansas in relation to other states. Ms. Sicilian, responded that a reporting service (BNA) lists several states that currently have the integrated plant theory, including the surrounding states of Missouri, Colorado, Oklahoma, Indiana, and Arkansas. Kansas is not listed among those states having the Ohio Rule. Ms. Sicilian believes Kansas is not included either because it has an Ohio Rule

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE Room 519-S, Statehouse, at 11:10 a.m. on March 14, 2000.

plus some integrated plant concepts or because the courts continue to broaden this exemption. She said Oklahoma and Missouri are on the list with a notation that the rule is being broadened by the state supreme court. She commented that the bill would provide a legislative broadening rather than a court interpreted integrated plant doctrine.

Committee discussion followed at which time Senator Langworthy noted that the straight integrated plant bill before the Committee is exactly what proponents requested in the 1999 Legislative Session. She pointed out that a request for refunds was not part of the 1999 proposal. It is her hope that proponents will be pleased to have the bill passed and will be willing to forego any refunds as a result of the court case. She feels it is the responsibility of the Committee and the Legislature to protect the integrity of the State General Fund over interests of corporate big business. In this regard, Senator Bond commented that the court case provided an unintended, unanticipated potential windfall in terms of going back several years for a refund. The state cannot afford those refunds, but it can give the business entities what they originally requested, which is what the bill does.

Chris Courtwright, Legislative Research Department, discussed the fiscal note for **HB 2011** as amended. At the outset, he noted that the original bill approved by the House in 1999 would have exempted purchases of various water districts from sales tax. The proposed amendments to the bill remove those provisions. The newly modified integrated plant provisions that are amendments to subsection (kk) prospectively are expected to reduce sales tax receipts, but elimination of any refunds to subsection (kk) would be expected to increase receipts for several fiscal years.

Mr. Courtwright reported that is anticipated that the Consensus Revenue Estimating Group will reduce the overall sales tax estimate by an additional \$3 million for fiscal year 2001 because of the prospective application of the court decision in subsection (n). The provision eliminating subsection (n) refunds does not have a fiscal note relative to the current estimate, since payment of those refunds was not contemplated when the estimate was made in November of 1999. However, if those refunds are not eliminated, the Consensus Group would be expected to reduce the overall estimate for sales tax receipts by an additional \$9 million in April (for a total of \$12 million). In this regard, Mr. Courtwright called the Committee's attention to a chart concerning fiscal years 2001 through 2005 included in a supplement note on the bill. (Attachment 2)

Senator Langworthy observed that, if the Committee does nothing on the issue in subsection (n), the state will lose \$12 million a year for three years. With anticipated losses which could result from other court cases, the figure could be as high as \$48 million.

Senator Bond moved to amend **HB 2011** as proposed and to report **HB 2011** as amended favorable for passage, seconded by Senator Steineger. The motion carried.

The meeting was adjourned at 11:35 a.m.

The next meeting is scheduled for March 15, 2000.