MINUTES

SPECIAL COMMITTEE ON ASSESSMENT AND TAXATION

September 19-20, 2002
Room 519-S—Statehouse

Members Present

Representative John Edmonds, Chair
Senator David Corbin, Vice Chair
Senator Barbara Allen
Senator Les Donovan
Senator Janis Lee
Senator Mark Taddiken
Representative Jerry Aday
Representative Deena Horst
Representative David Huff
Representative Nancy Kirk
Representative Bruce Larkin
Representative Bill Light
Representative Bonnie Sharp

Staff Present

Chris Courtwright, Kansas Legislative Research Department
April Holman, Kansas Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees

Richard Jackson, East Central Kansas Economic Opportunity Corporation
Julie Riddle, Heart of America Family Services
Andres Dominguez, Kauffman Foundation
Karen W. Sommers, Emporia State Bank and Trust Company
Angie Franklin, Communities United Credit Union in Wichita
Gerry Mawson, Family Development Account participant
Melinda Lewis, El Centro, Inc.
Richard Cram, Kansas Department of Revenue

Bill Waters, Property Valuation Division, Department of Revenue
Joseph P. O' Sullivan, Reno County Counselor
Jim Siemens, Reno County Appraiser
Craig Clough, Harvey County Appraiser
Rick Batchelor, McPherson County Appraiser
Craig Simons, Harvey County Administrator
Don Moler, League of Kansas Municipalities
John Grace, Kansas Association of Homes and Services for the Aging
William M. Ward, Jr., Presbyterian Manors of Mid-America, Inc.
Bill Williams, City of Inman
Patricia Getz, resident of Newton, Kansas
Bill Brown, resident of Newton, Kansas
William Goering, Mayor, City of McPherson
Willis Heck, Vice Mayor, City of Newton
John Waltner, Mayor, City of Hesston
Kenneth Meier, Harvey County Commissioner
Larry Sharp, Reno County Commissioner
Stephen S. Richards, Secretary, Kansas Department of Revenue
Ken Peterson, Kansas Petroleum Council
Steve Kearney, Petroleum Marketers and Convenience Store Association of Kansas

Thursday, September 19
Morning Session

The meeting was called to order in Room 519-S, Statehouse, by Representative John Edmonds, Chair, at 10:00 a.m. on September 19, 2002. Representative Edmonds called upon Chris Courtwright, Kansas Legislative Research Department, for an overview of the topics assigned to the Committee by the Legislative Coordinating Council and for a report on the current status of State General Fund (SGF) receipts.

Mr. Courtwright briefly outlined the following topics assigned to the Committee:

- Topic 1—Policy Implications of Sunsetting Sales Tax Exemptions (Attachment 1);
- Topic 2—Legal Necessity of Extending Certain Tax Credits to Railroads and Other State-Assessed Public Utilities (Attachment 2);
- Topic 3—Motor Fuels Tax Point of Sale (SB 537);
- Topic 4—Family Development Account Program (SB 231);

- Topic 5—Appropriateness of Property Tax Exemption for Certain Independent Living Centers; and

- Topic 6—Sales Tax Parity on the Sale of Firearms, Weapons, and Ammunition.

Mr. Courtwright continued with a review of developments in state finance since the Legislature adjourned on May 17, 2002. At the outset, he reported that, as of July 18, the total receipts to the SGF were $211.7 million, or 4.9 percent below the final estimate, as adjusted on June 11 for legislation (Attachment 3). In addition, he noted that for the first two months of FY 2003 alone, the state is $49.3 million below estimates, and it is expected that receipts will continue to fall. He observed that other states are also experiencing record shortfalls and ongoing budget crises. Committee discussion followed regarding possible contributing factors to the shortfall in Kansas' SGF receipts.

Chair Edmonds turned the Committee's attention to Topic 4—Family Development Account (FDA) Program (SB 231), which would establish a program under the Department of Commerce and Housing which would enable eligible families and individuals to establish tax-advantaged accounts for the purpose of funding specific purchases. Mr. Courtwright presented background information on SB 231 (Attachment 4). In addition, he called attention to copies of the supplemental note on SB 231 as amended by the Senate Committee of the Whole, pointing out that the Department of Revenue suggested that the bill would be expected to reduce receipts by about $519,000 and would necessitate expenditure of an additional $59,889 in administrative costs (Attachment 5).

Richard Jackson, Executive Director of East Central Kansas Economic Opportunity Corporation (ECKAN) testified in support of a long-term, flexible statewide program for individual development accounts (IDAs) funded by the State of Kansas. He went on to explain that the current ECKAN IDA program operates through a federal grant with certain restrictions attached which make it difficult to have a successful program. He emphasized that IDAs help low-income citizens become self-sufficient and that IDAs are extremely cost effective, yielding a five-fold return to the community (Attachment 6).

Julie Riddle, Heart of America Family Services, discussed the purpose of FDAs, also known as IDAs. In addition, she outlined the main components of FDAs which include matching funds, economic education or financial literacy, and one to one support or case management. In conclusion, she presented statistics relating to the success of Heart of America Family Services' family asset building (FAB) program, emphasizing that FDAs are effective instruments in helping lower income families build assets. Her written testimony includes statements by several FAB participants in support of the program (Attachment 7).

Andres Dominguez testified in support of IDA programs on behalf of the Kauffman Foundation, based in Kansas City, Missouri. He began by explaining that the Foundation works towards the vision of economically self-sufficient families and healthy communities, and the Foundation became a charter funder of the IDA movement because the IDA is aligned with the Foundation's vision. He further explained that the Foundation works in partnership with others to improve the lives of children and families by creating an environment where individuals can succeed as productive citizens. The Foundation provides funding and technical assistance in building quality programs and providing services in the areas of early education and neighborhood development, and it promotes organizational effectiveness for local and national non-profit partners.

Mr. Dominquez went on to say that the Foundation's mission is to research and identify unfilled needs of society and develop, implement, and/or fund breakthrough solutions such as IDAs. He observed that, in the past, many families did not have the opportunity to save for the purpose of wealth accumulation. The Foundation believes that wealth creation and access to the economy are vital for individuals in all segments of the community. In this regard, he informed the Committee that the Foundation participated in the first wide scale test of the IDA in 1997 by investing in the American Dream Policy Demonstration, also known as the American Dream Demonstration or ADD. By partnering with the Corporation for Economic Development (CFED), the Kauffman Foundation was able to bring together 13 diverse communities, one of which was the west side of Kansas City, Missouri. The early success of ADD led to overwhelming bipartisan support of national legislation, called the Assets for Independence Act. It was through that support that the Kauffman Foundation was able to implement a new IDA strategy which was first introduced in Kansas City, Kansas. Heart of America Family Services provided the technical assistance to implement this program, and this past summer, the initial recruitment of 250 individuals was completed. In addition, the Foundation approved a $1million IDA expansion in the Kansas City area that includes 500 new IDAs which will allow other families access to wealth accumulation. This effort includes the transfer of a small portion of the IDAs to Emporia. In addition, the Wichita United Way recently hosted a forum for the Foundation, and Garden City has scheduled a forum in October.

In closing, Mr. Dominguez noted that since 1997 the Foundation has issued grants totaling $1.5 million to support the IDA movement. He further noted that the IDA program came into the region due to the support, research, and advocacy of the IDA program administered by the University of Kansas. He emphasized that IDAs create economic access for families in areas such as home ownership, micro enterprise, and post secondary education. He observed that the IDA is not just another social program, but rather, it is an economic development tool placed in the hands of families that have never had it available to them in the past.

Karen W. Sommers, Community Reinvestment Act Officer for Emporia State Bank and Trust Company, informed the Committee that the Emporia State Bank was chosen to participate as a financial partner with the Emporia Community Housing Organization along with Heart of America Family Services and the Kauffman Foundation. She discussed Emporia State Bank's commitment to invest in the community, noting that FDAs relate closely to the bank's core values. She observed that FDAs are not a loan but rather are tools to give the diverse populations in the Emporia area hope for the future (Attachment 8).

Angie Franklin, Communities United Credit Union (CUCU), Wichita, testified in support of IDA programs. At the outset, she explained that CUCU is different from most credit unions because it is a community development credit union, which is certified by

Community Development Financial Institutions (CDFI) through the Department of the Treasury. Ms. Franklin explained further that the purpose of CUCU is to provide the low income community in Sedgwick County with financial services which are not available through traditional financial institutions. She went on to say that many of their credit union members formerly were unable to receive fair and reasonable financial services and were forced to use high interest finance companies, pay day lenders, and pawn shops. She commented that, since opening in 1996, CUCU has made tremendous strides to meet the unmet needs of the members it serves by creating accessible financial services in the context of their current and future needs.

Ms. Franklin informed the Committee that, in June 2001, CUCU launched an IDA Vista Pilot Program, which is funded through the National Federation of Community Development Credit Unions in New York. CUCU felt that the National Federation was an ideal vehicle for IDAs because its mission is to promote savings and economic empowerment for low income individuals and families. As a federally insured, not-for-profit financial institution, CUCU can offer IDA participants a range of financial services such as small loans to build or start a business or savings plans for the purchase of a home. Currently, CUCU has a membership of over 1,500 members of which 62 percent are in the low income bracket.

Ms. Franklin noted that, because one of the main focuses of CUCU is financial literacy, CUCU conducts 20 to 30 financial credit counseling sessions weekly. She reported that the counseling has had positive results. For example, the majority of CUCU members are saving approximately $25 a month. Before counseling, they had not been saving at all. She emphasized that the success of the program requires education, financial support, and collaboration with other organizations in the community. She commented that, by partnering with other organizations, the program becomes a part of the solution to the nation's problem of a lack of economic empowerment and predatory lending. She informed the Committee that sustaining the Vista Pilot Program is a challenge because, unfortunately, it is a three-year project. In conclusion, she stated that by forming a statewide IDA strategy, the state can provide a major and much needed source of funding to support the cause for which IDA programs were created.

Gerry Mawson, a participant in the FDA program offered by Heart of America, commented that living from paycheck to paycheck made it impossible for her to save money, but the program helped her begin a savings plan. She explained that, even though she obtained an associate degree after working as a nurse aide for 17 years, her income level did not improve. With the help of the IDA program, she learned how she could save money and how to finance the purchase of a home. In addition, the program helped her establish financial goals. As a result, she recently attained a bachelor's degree and is hopeful that she will be able to get a higher paying job. She noted that she was able to attend the financial counseling classes offered through the IDA program because the program provided both transportation and child care while she attended the classes.

Contending that there is a need for an FDA plan that meets demands statewide, Melinda Lewis, El Centro, Inc., testified in support of SB 231. She noted that the bill was sponsored by Senator David Haley and that advocates have worked with him on modifications. She discussed suggested amendments. The amendments would provide that tribal organizations are eligible entities for administering FDA programs and would allow greater flexibility in implementation. In addition, Ms. Lewis discussed two other topics, "What have other states done with FDA programming and funding?" and "How do FDAs coincide with Kansas' overall community and economic development goals?" (Attachment 9).

There being no others wishing to testify, Chair Edmonds closed the public hearing on Topic 4. He requested that staff extend an invitation to Senator Haley to address the Committee on the subject or provide written testimony at a future meeting.

The meeting was recessed for lunch at 12:05 p.m.

Afternoon Session

Chair Edmonds called the meeting to order at 1:30 p.m., at which time he called upon Mr. Courtwright to present background information on Topic 2—Legal Issues Regarding the Expansion of Tax Credits to Railroad and Other State-Assessed Property (SB 39). Mr. Courtwright explained that, after the conclusion of the 2002 Legislative Session, a concern was raised that the language amending KSA 2001 Supp.79-32,206 may appear to expand the credits to all property taxes paid by public utility tangible personal property (Attachment 10). For the Committee's information, he distributed copies of the Conference Committee Report on SB 39, as agreed to May 16, 2002, (Attachment 11) and copies of the *2002 Session Laws of Kansas* containing the language enacted as an amendment to KSA 79-32,206 (Attachment 12).

Richard Cram, Kansas Department of Revenue, presented the Department's fiscal impact calculations relating to Section 11 of SB 39. He noted that the original fiscal note of $12.7 million for FY 2006 and $13.8 million for FY 2007 assumed that the Legislature intended to extend the business machinery and equipment tax credit only to railroads, effective tax year 2005. However, the Department believes that the bill as passed extends the credit to all public utilities, contrary to legislative intent. If the tax credit can be extended to all public utilities beginning in tax year 2005 instead of limiting the extension only to railroads, additional refundable tax credits totaling $42 million would be extended. The additional extension of credit would result in a negative fiscal impact of $42 million for FY 2006 and $43.2 million for FY 2007 (Attachment 13).

Chair Edmonds announced that the discussion of Topic 2 would be resumed at the October meeting with the public hearing. He then opened the public hearing on Topic 5—Appropriateness of Property Tax Exemption for Certain Independent Living Centers (SB 479).

Bill Waters, Property Valuation Division, presented an informational memorandum outlining the administrative and judicial interpretation of KSA 79-201b, *Fifth* enacted in 1975, which exempts from property taxation the real and personal property of a not-for-profit corporation that is used exclusively for housing for elderly persons. In addition, the memorandum discusses the provisions of IRS Revenue Ruling 72-124 relating to the charitable status of organizations, which was amended into the Kansas statute in 1999 (Attachment 14).

Joseph P. O'Sullivan, Reno County Counselor, discussed the details of two recent cases decided by the Board of Tax Appeals (BOTA) in which BOTA attempted to interpret the legislative intent in the use of the word "operated" in KSA 79-1439(b)(1)(D) pertaining to the classification rate for commercial property owned and operated by not-for-profit corporations. Mr. O'Sullivan emphasized that Reno County believes that the legislative intent was to apply the tax break for not-for-profit entities only when the property is used and occupied by the not-for-profit organization. In his opinion, it is imperative that the Legislature clarify the statute (Attachment 15). For the Committee's information, Mr. O'Sullivan distributed copies of the BOTA decisions he discussed, *In the Matter of the Equalization Appeal of Menorah Health Center, Inc.*, (Attachment 16) and *In the Matter of the Equalization Appeal of the Equalization of Main Line, Inc.* (Attachment 17).

Jim Siemens, Reno County Appraiser, compared photographs of several independent living units for the elderly in Reno County with photographs of similar duplex dwellings and low-income single family dwellings on tax rolls in the same area. His handout also included information with regard to Harvey and McPherson Counties. He reported that a total of 269 independent living units in Reno County are tax exempt, resulting in a $289,162 tax loss for the county. In Harvey County, 466 elderly housing units with an appraised value of $34,819,210 are exempt, resulting in an estimated $467,763 tax loss for the county for 2002. He contended that elderly persons living in housing units operated by a non-profit corporation under KSA 79-201(b) *Fifth* should be paying property taxes because the units are not part of the nursing home facility proper, are not owned by a municipality, and are not financed with federal funding. He maintained that the issue is a matter of fairness, noting that low-income retired citizens who cannot afford to live in an independent living unit must pay property taxes which subsidize community services also used by higher-income persons living in independent living units (Attachment 18).

Craig Clough, Harvey County Appraiser, echoed Mr. Siemens' concerns with regard to the tax exempt status of several independent elderly housing units in south central Kansas owned by non-profit retirement communities. In his opinion, the sizeable amount of up-front fees included in a typical retirement community life lease and the additional expenses residents must pay for electricity, telephone, meals, and housekeeping clearly indicate that the residents are affluent and can afford to pay property taxes. He emphasized that the issue does not concern raising taxes but concerns sharing the tax burden fairly and equitably.

Rick Batchelor, McPherson County Appraiser, expressed concerns about the tax exempt status of independent living units in McPherson County on behalf of the McPherson County Commission. He noted that the Commission views the tax exemption not as an income issue but as an ad valorem tax issue. He went on to explain that individuals who live in independent living units must construct them with their own funds, and the units must be built according to specifications of the non-profit organization. The units are maintained by residents through a monthly lease arrangement. Upon the death of the resident, the non-profit organization may keep from 60 to 80 percent of the resale of the life lease. He observed that, due to the costs of construction and maintenance, only a very small segment of the elderly can afford independent living units.

Mr. Batchelor discussed ramifications of the tax exemption extending beyond independent living communities for the elderly. For example, he noted that a non-profit organization in Lindsborg has recently acquired older homes not physically attached to the campus and not modified for ADA standards. Because the homes are now owned by a non-profit organization, the residents are exempt from property taxation. However, residents in similarly constructed homes on either side must pay taxes. As an example of another type of inequity, he noted that one of the residents of an independent living unit in McPherson is a professor at the University of New York who uses the unit for a summer home six to eight weeks each year and then returns to New York. In his opinion, legislative intent did not include a property tax exemption for a summer home for high income individuals such as the professor.

In conclusion, Mr. Batchelor noted that, the removal of independent living facilities from property tax rolls results in a significant increase in the mill levy to meet ongoing public services. The Commission is concerned that private money is being used to build and support independent living units, but the residents do not share the burden of paying for the streets, ambulance service, and several other community services which they use.

Craig Simons, Harvey County Administrator, commented that the property tax exemption issue is pitting local governments against retirement communities, splitting communities, and creating ill will between those who pay property taxes and those who do not pay property taxes. He outlined the history of the exemption and discussed the findings of a task force which studied the issue surrounding KSA 79-201b, *Fifth*. In his opinion, the Good Neighbor Program recommended by the task force is fatally flawed and poor public policy. Mr. Clough suggested that exempt independent housing units either be placed on the tax rolls after a three to seven year time period or be placed on the tax rolls in a tiered fashion over a certain number of years (Attachment 19).

Don Moler, League of Kansas Municipalities, reported that the League recently conducted a survey in conjunction with the Kansas Association of Counties on the subject of property tax exemptions for independent living centers. He called attention to the results of the survey which were attached to his written testimony, noting that the not-for-profit adult care home retirement communities were identified through a directory provided by John Grace, President of the Kansas Association of Homes and Services for the Aging (KAHSA). The League found that there are 63 retirement facilities of this type spread over 31 counties. Mr. Moler explained the methodology used to determine the estimated tax loss per year per facility and noted that the total estimated tax loss for the 31 counties is $2.5 million per year. He informed the Committee that the issue will be discussed further during the League's annual conference in October (Attachment 20).

John Grace, KAHSA, testified in opposition to SB 479, contending that the current law is good public policy. At the outset, he noted that approximately 14,000 older people reside in not-for-profit retirement communities in Kansas. After describing the typical resident, he listed the benefits that not-for-profit communities provide for their residents, state government, and local communities. He emphasized that not-for-profit facilities must meet strict requirements in order to obtain a tax exemption. He noted that, to address the concerns of some communities regarding the exemption, KAHSA helped create the Good Neighbor Program which provides the framework for local negotiation of voluntary payments by not-for-profit senior housing providers to local units of government and schools. In addition, he noted that, although the Harvey County Commission has rejected the program, several KAHSA members are moving ahead with the program. In conclusion, Mr. Grace discussed the reasons he believes that quality of construction should not be a factor in determining the tax exempt status of independent living units for the elderly (Attachment 21).

William M. Ward, Jr., President and CEO of Presbyterian Manors of Mid-America, Inc., testified in opposition to SB 479 on the grounds that it would adversely affect not only elderly Kansas residents but also the dedicated not-for-profit organizations providing services to older adults. He argued that SB 479 is not necessary because the Legislature clarified the law which creates the tax exemption for not-for-profit providers, and the Kansas Supreme Court reaffirmed the Legislature's interpretation (Attachment 22).

For the Committee's information, Mr. Ward said that he has found that residents of independent living facilities do not elect to live there to avoid property tax but enter upon a life changing event. He explained that Presbyterian Manors, Inc., builds independent living units upon demand, and the type of unit built reflects the needs of the community. As the construction of the unit progresses, the applicant begins to make payments but may leave at any point. Generally, the total of the monthly charge and the interest earned from the deposit is what drives the operation of the continuing care retirement community. When individuals can no longer live independently and move to assisted living, the family often receives a 70 to 90 percent refund or the refund is applied to the cost of assisted living arrangements. Mr. Ward noted that, for this year alone, Presbyterian Manors, Inc., will write off over $650,000 due to residents' inability to pay or death, and over $750,000 will be spent to help support residents. In his opinion, the benefits Presbyterian Manors provides to communities through reinvestment far outweighs the tax revenues that might be generated.

Bill Williams, representing the City of Inman, echoed the opinion of other conferees that KSA 79-201(b), *Fifth* creates a tax loophole and should be amended or repealed. He noted that BOTA's decision to grant a tax exemption for the 88 independent living units owned by Pleasant View Home, Inc., of Inman adversely affected the city's 2003 budget preparation. He further noted that, although Pleasant View Home has made voluntary contributions to pay for city services, the payments do not equal the total that property taxes would produce and cannot be used in the budgeting process because they may be discontinued at any time. Mr. Williams expressed his concern that a sizeable population of affluent people who are not paying property taxes can vote on tax issues affecting the city and the school district. He also reviewed Internal Revenue codes and rulings applicable to Pleasant View Home (Attachment 23).

Patricia Getz, a resident of Newton, read a statement prepared by Marvin and Betty Baehr of Newton expressing their objection to churches receiving tax exemptions on money producing properties (Attachment 24). Ms. Getz stated that she lives in her own home on one income and pays property taxes. She complained that most persons living in tax exempt retirement centers pay no property taxes even if they are as able bodied as she is and can afford to pay taxes (Attachment 25).

Bill Brown, a resident of Newton since 1959, testified in support of conferees from Harvey, Reno, and McPherson Counties who oppose the property tax exemption for not-for-profit retirement homes. He stated that he pays approximately $1,500 per year in property taxes for his home which was built in 1954. Because he is retired and living on a fixed income, he cannot afford to move into an independent living facility. He noted that Harvey County has the largest percentage of property off the tax roll which places a hardship on local government officials who do not want to raise taxes in order to finance necessary community services. In his opinion, the county would not need to raise taxes if the statutory loophole allowing non-profit independent living facilities a property tax exemption was closed. He reasoned the elimination of the tax exemption would not involve a tax increase but would simply allow counties to collect more taxes.

William Goering, Mayor of McPherson, commented that a blanket property tax exemption for all elderly housing operated by charitable organizations is a gross injustice to other elderly citizens who continue to live in their homes and pay property taxes. He contended that the language in KSA 79-201(b), *Fifth* should be amended because it does not adequately address the issue of fairness. He urged the Committee to support an amendment which would require taxation of all elderly independent living units and revoke all exemptions currently granted (Attachment 26).

Willis Heck, Vice Mayor of Newton, noted that the City of Newton currently has three not-for-profit retirement communities with independent living units off the tax roles. As a result, the City of Newton has experienced a tax loss of $78,514. He complained that, as the number of tax-exempt independent housing units increase each year, it is becoming increasingly difficult for the City of Newton to provide the same high level of service to its citizens (Attachment 27).

On behalf of the City of Hesston, Mayor John Waltner urged the Committee to take a stand for tax fairness by permanently eliminating the property tax exemption for independent living units in not-for-profit retirement centers. In this regard, he discussed Showalter Villa, which he described as an upscale, broad range, not-for-profit retirement center with a current appraised value of $15,685,960. Mayor Waltner emphasized that Showalter Villa is a tremendous asset to the City of Hesston. However, he believes it is unfair that local property taxpayers living in nonexempt housing provided the funding for a $1 million upgrade of the wastewater treatment plant and sewer line which became necessary due to the development of Showalter Villa. In addition, he discussed Showalter Villa's impact on the city's EMS budget (Attachment 28).

Ken Meier, Harvey County Commissioner, contended that the demands of funding the infrastructure of the county, city, and schools currently is borne by an unfair and unequal application of the property tax. He observed, “Infrastructure belongs to all, benefits all, and should be supported by all” (Attachment 29).

Mr. Siemens read testimony submitted by Reno County Commissioner Larry Sharp, who was unable to attend the meeting. Mr. Sharp’s testimony indicates that independent housing units should be subject to full property taxation as a matter of fairness to all property owners (Attachment 30).

Chair Edmonds called the Committee’s attention to written testimony concerning Topic 5 submitted by Randy Allen, Kansas Association of Counties. Mr. Allen states that the Association does not question the exempt status of nursing and adult care health facilities but urges the Legislature to amend the law with regard to the issue of duplexes and single family homes for the elderly which escape property taxation (Attachment 31).

There being no others wishing to testify, Chair Edmonds closed the public hearing on Topic 5.

The meeting was adjourned at 5:35 p.m.

Friday, September 20

Chair Edmonds called the meeting to order at 10:00 a.m. at which time he opened the public hearing on Topic 3—Motor Fuels Tax Point of Sale (SB 537), and called upon Stephen S. Richards, Secretary of the Department of Revenue, for background information on SB 537.

Secretary Richards began by calling attention to a chart attached to his testimony illustrating the taxation of motor fuels in the distribution process. As illustrated on the chart, taxation of motor fuel currently occurs at the distributor of first receipt level, but SB 537 would move the point of taxation from the distributor of first receipt to the supplier, implementing what is known nationwide as “Tax at the Rack.” Secretary Richards discussed the benefits of moving the point of taxation and collection on motor fuels. In addition, he addressed concerns fuel suppliers, distributors, and marketers have voiced regarding the change in the point of taxation. In closing, he expressed strong support for SB 537 (Attachment 32).

Ken Peterson, Kansas Petroleum Council, testified in opposition to SB 537. At the outset, he acknowledged that member refiners and suppliers support the Kansas Department of Revenue’s desire to move the motor fuel tax collection point to the terminal rack in order to promote uniformity in tax filings. However, members are not convinced that SB 537 as proposed by the Department is the most prudent approach. Mr. Peterson pointed out that other states have adopted a “rack tax” acceptable to all parties. He encouraged the Department to start anew by looking at statutes adopted in other states which not only have been acceptable to all interested parties but also have withstood the test of time in terms of potential legal challenges (Attachment 33).

Steve Kearney, Petroleum Marketers and Convenience Stores of Kansas, testified in opposition to SB 537 on behalf of Tom Palace. Mr. Kearney commented that the thrust behind moving the point of taxation to the rack is to stop tax evasion. He pointed out that the petroleum industry has embraced the programs the Department of Revenue has developed over the past ten years to stop fuel tax evasion. The petroleum industry believes that moving the point of taxation to the rack is unwarranted because the safeguards that have been put in place are adequate, leaving little room for motor fuel excise tax evasion. In conclusion, Mr. Kearney pointed out that moving the point of taxation to the rack does not stop the Native American tax problem. In his opinion, the Department should address the Native American issue instead of pursuing legislation for which there appears to be no need (Attachment 34).

There being no others wishing to testify, Chair Edmonds closed the public hearing on Topic 3.

The Committee's attention was turned to Richard Cram who presented an update on the Streamlined Sales Tax Project. Mr. Cram discussed the status of Phase 1, 2, and 3 of the Project, the pilot project, and the federal moratorium on Internet taxation (Attachment 35).

Senator Corbin informed the Committee that he attended a conference on the Streamlined Sales Tax Agreement held in Philadelphia on September 12 and 13. He explained that persons attending included a mixture of legislators, representatives of tax collection departments from each state represented, and representatives of various businesses. He noted that debate centered on issues such as the treatment of taxation of prepared foods and the rounding rule used by some states. He also met with the Governor's Association and was told that the Association is committed to finalizing the Streamlined Sales Tax Agreement after the November elections. Committee discussion regarding the Streamlined Sales Tax Project followed.

Chair Edmonds discussed topics to be considered at future meetings to be held on October 24-25 and November 14, 2002. The meeting was adjourned at 11:40 a.m.

Prepared by Shirley Higgins
Edited by April Holman

Approved by the Committee on:

October 24, 2002