

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:45 a.m. on February 11, 2004, in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Joan Wagon, Secretary, Kansas Department of Revenue
Ron Hein, Kansas Restaurant and Hospitality Association
Philip Bradley, Kansas Licensed Beverage Association
Amy Campbell, Kansas Association of Beverage Retailers
Rebecca Rice, Kansas Clubs and Associates
Richard Cram, Kansas Department of Revenue
Jay Befort, Kansas Department of Revenue

Others attending:

See Attached List.

SB 414—Delinquent taxes precluding renewal of licenses under liquor control act and club and drinking establishment act

Joan Wagon, Secretary, Kansas Department of Revenue, testified in support of **SB 414**. At the outset, she noted, when she first took the position of Secretary, she was particularly shocked by the number of people who collect trust taxes such as sales, withholding, and liquor taxes and simply do not remit them to the Department. She noted that approximately 80% of Kansas taxpayers remit on time and in full. With the completion of the recent tax amnesty program, the Department is stepping up its compliance efforts in order to minimize the amount of delinquent tax liability. **SB 414** is one of the Department's proposals to accomplish that objective. Secretary Wagon explained that Section 1 of the bill requires a liquor licensee to be current in payment of withholding, sales, and liquor taxes relating to the liquor-licensed business before the license can be issued or renewed. Current law requires liquor licenses be current only in respect to liquor tax payment. She noted that a proposed amendment on page 2, line 24, clarifies that the provision applies to the collection of delinquent sales and withholding taxes owed by businesses with liquor licenses. In addition, a proposed amendment on page two, line 31, clarifies that the license non-renewal provisions are not associated with individuals associated with the business who have an outstanding individual tax liability. She explained that Section 2 of the bill amends the Club and Drinking Establishment Act to add the sales tax and withholding tax clearance requirement for issuance or renewal of a club or drinking establishment license. (Attachment 1)

Secretary Wagon introduced Tom Groneman, Director of Alcohol and Beverage Control, and Jeff Scott, Director of Compliance. She explained that both work together with their staffs to ensure that a liquor license is not issued if the liquor taxes are not current. She pointed out that the bill would extend their work to the area of sales and withholding taxes for the corporation or store.

Ron Hein, representing the Kansas Restaurant and Hospitality Association (KRHA), informed the Committee that KRHA is neutral on **SB 414** but supports the concept provided that the provisions are only applicable to the taxes on the business which operates a club or drinking establishment. He noted that the amendments offered by Secretary addressed the concerns KRHA had about the bill. (Attachment 2)

Philip Bradley, Kansas Licensed Beverage Association (KLBA), noted that KLBA supports the goal to recover taxes rightfully owed to the state. KLBA will support **SB 414** if amended further to include all businesses or individuals that receive licenses from the state. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 11, 2004, in Room 519-S of the Capitol.

Amy Campbell, Kansas Association of Beverage Retailers (KABR), testified in opposition to **SB 414**. Ms. Campbell said that the amendments offered by the Department of Revenue are appreciated by KABR; however, they do not address all of KABR's concerns. She noted that the bill does not address Kansas corporations. In addition, the bill does not ensure that taxes owed by a spouse of a liquor store retailer which are unrelated to the liquor license would not interrupt the license renewal. She noted that retail liquor stores do not pay sales tax but pay an enforcement tax on all products sold, and licenses are not renewed if the retailer is behind in the payment of enforcement taxes. The bill would add the requirement that payment of the withholding tax be current. She emphasized that KABR uses data from the Department of Revenue to address problems with compliance. She noted that the Department has not presented data concerning liquor retailers' compliance rate in collecting withholding tax. She emphasized that liquor stores do a good job keeping their tax accounts current. KABR members believe that the bill is unfair because it does not address all state issued licenses. KABR requests that all licensees be held to the same standard for the collection of taxes. (Attachment 4)

In response to committee questions, Richard Cram, Kansas Department of Revenue, informed the Committee that the Department introduced **SB 468** which requires that a long list of professional license renewals be contingent on their being current on tax liabilities.

Rebecca Rice, representing the Kansas Clubs and Associates, stated that Kansas Clubs and Associates is neutral on **SB 414**; however, it supports the amendments proposed by the Department of Revenue. She noted that Section 2 eliminates the requirement to be current on all tax payments before Class A Club licenses are issued to military liquor establishments and to fraternal and benevolent organizations. In her opinion, the exception appears to create a limitation rather than expanding current authority. (Attachment 5)

Mr. Cram stood to address the comments by conferees. As to Ms. Campbell's concern regarding the tax liability of a liquor retailer's spouse, he agreed to amend the bill to make it clear that the tax liability of a spouse of a stockholder, an officer, etc. would not affect the renewal of a liquor license. As to the issue of inclusion of Kansas corporations, he explained that a large chain owned by a foreign corporation, such as Applebee's, currently must artificially set up a Kansas corporation to hold a club or drinking establishment license, even though the parent corporation may be the employer and submit the withholding and sales taxes. This arrangement makes it difficult for the Department to determine the tax status of the business if the foreign corporation sets up the Kansas corporation under a different name. The Kansas corporation may be registered under one account and the business may have a different account with a different federal employee ID number. Thus, the inclusion of Kansas corporations would complicate things for both the licensee and the Department. As to Ms. Rice's concern about singling out benevolent clubs and clubs on military facilities, he referred to page 5, line 24, and explained that they would be subject to the tax clearance provision just as all others.

There being no others wishing to testify, the hearing on **SB 414** was closed.

SB 411—Informal conference procedures related to objections of taxpayer over drug tax assessments

Mr. Cram testified in support of **SB 411**, and introduced Phil Wilkes, the Administrative Appeals hearing officer for drug tax assessment appeals, and Marlea Janes, the staff attorney who handles many of the cases. Mr. Cram explained that the bill moves the administrative appeal process for drug tax assessments from the formal Kansas Administrative Procedures Act (KAPA) hearing statute to the Department's informal conference process used for other major tax types. The change to an informal process would result in an annual savings of approximately 100 hours of hearing officer time and 400 hours of senior administrative assistant time. That time could be spent on other tasks for the Department. (Attachment 6)

Senator Donovan asked approximately how much drug tax is being collected. In response, Mr. Wilkes said that in Fiscal Year 2003, \$.9 million was collected. In past years, as much as \$1.5 million has been collected. He said that the average appeal takes about one year. The primary reason for the long appeal time is defense attorneys do not want to admit to anything on the drug charge until the criminal case is resolved even though, by statute, the information cannot be used outside the Department.

There being no other questions and no others wishing to testify, the hearing on **SB 411** was closed.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 11, 2004, in Room 519-S of the Capitol.

SB 412–Collection of delinquent taxes

Mr. Cram distributed copies of his written testimony in support of **SB 412**. (Attachment 7) He introduced Jay Befort, a Department staff attorney with legal services, who discussed the provisions of the bill. Mr. Befort explained that the bill simply adds “and personal” to the tax warrant and lien statutes to create a statutory lien interest in favor of the state in personal property of the delinquent taxpayer. He explained that, over the years, the Department has confronted the inability to file a secured claim to attach to the equity in a debtor’s personal property in a bankruptcy context. He emphasized that the goal of the bill is not to obtain the right to take the individual’s property but rather to give the Department the opportunity to file a secured claim in the context of a bankruptcy. With this, the hearing on **SB 412** was closed.

SB 413–Sales tax exemption identification numbers and certificates

Mr. Cram testified in support of **SB 413**. He explained that the organizations affected by the bill are listed on the last page of his written testimony. The bill would require organizations with entity-based sales tax exemptions to apply for an identification number from the Department of Revenue to be shown on any exemption certificate given to a retailer when the exempt organization claims a sales tax exemption on its purchases. Mr. Cram explained that one of the goals of the Streamlined Sales Tax Project is to reduce the burden on retailers to police the legitimacy of sales tax exemption claims. (Attachment 8)

There being no others wishing to testify, the hearing on **SB 413** was closed.

The meeting was adjourned at 11:50 a.m.

The next meeting is scheduled for February 12, 2004.