

## MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:45 a.m. on January 25, 2001, in Room 519-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Bill Dvorak, AT&T  
Mark Beshears, Sprint  
Robert J. Fasl, SBC Communications  
Richard Cram, Kansas Department of Revenue

Others attending: See attached list.

The minutes of the January 24, 2001, meeting were approved.

**SB 1—Sales taxation; concerning the taxation of certain services provided by telecommunications companies.**

April Holman, Legislative Research Department, explained that **SB 1** deals with the taxation of “bundled” telecommunications services and that a study of this topic was requested by the telecommunications industry in response to their new practice of “bundling” services such as local telecommunications, interstate and intrastate long distance telecommunications, Internet, data services, and other related products and services. She reviewed the report of the Interim Special Committee on Assessment and Taxation which held hearings on taxation of “bundled” telecommunications services and recommended the introduction of the Department of Revenue’s proposal to facilitate the taxation of “bundled” telecommunications services. The Interim Committee Report indicates that the Committee recognizes the changing nature and services provided by the telecommunications industry and the resulting concerns with the traditional system of telecommunications taxation. (Attachment 1)

Bill Dvorak, AT&T, testified in support of **SB 1**. (Attachment 2) He explained that local phone service, long distance, wireless, Internet, and cable television will be offered in a single package for a single price on a single non-itemized customer bill. He noted that, unfortunately, some of the services are subject to sales tax under Kansas law and some are not. The bill would recognize this change in technology and would apply the sales tax only to the taxable elements in the package. Mr. Dvorak noted that a recent study on “bundling” indicated that approximately 40 percent of consumers desire to have a bundled package. He said, on the industry side, it is easier to bill because there is no need for several individual billing systems. He explained that, rather than companies having to break services up on the bill and specify which ones are taxed and which are not, **SB 1** would allow companies to maintain records and apply taxes according to which items are subject to state tax and then apply those taxes in a separate tax line item on the bill. In conclusion, Mr. Dvorak noted that last year the telecommunications industry suggested three possible solutions to taxing bundled communication services, and the Department of Revenue reviewed the proposals as did the Interim Committee.

Mark Beshears, Sprint, testified in support of **SB 1**, reiterating that the bill is the result of discussions between the telecommunications industry and the Department of Revenue over the past year. (Attachment 3) In addition, he discussed vendors who have a cable product which is “bundled.” He explained that in billing, Sprint would give the components of the bundle a product identification code and then run that code through their taxing system. All

applicable taxes would then be put on the customer's bill. He commented that

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nothing is changing on the invoice from a tax perspective. The part that is changing is the price for each component is not specifically stated.

Robert Fasl, SBC Communications, gave final testimony in support of **SB 1**. (Attachment 4) He informed the Committee that SBC is currently preparing to compete in the Kansas market where service offerings may include "bundling" of taxable and nontaxable services. Therefore, SBC encourages passage of **SB 1**, with the knowledge that the sales tax base of communications services "bundles" is only the taxable services provided in each bundle.

Richard Cram, Kansas Department of Revenue, discussed an amendment to **SB 1** as recommended by the Secretary of Revenue. He distributed copies of the suggested amendment which adds a new sentence beginning on page 1, line 23, as follows: "Prior to billing taxable services on a combined basis with nontaxable services, the retailer shall enter into a written agreement with the Secretary identifying the records to be used in determining the taxable portion of the selling price of those combined services." (Attachment 5) Mr. Cram said the Secretary offered the amendment because he believes that it would be better for the Department and the telecommunications company to verify up front what is and what is not taxable and how the tax is calculated so that, when a state audit is conducted later, there will be no surprises.

Chairman Corbin asked representatives of the telecommunication industry present for a response with regard to the Revenue Department's suggested amendment. Mr. Beshears stated that he did not believe that the industry would have a problem with the amendment.

Senator Allen began a discussion regarding the separation of taxable and nontaxable services in the "bundling" process. She confirmed that if a provider does not separate taxable and nontaxable services, all services will be taxed. She commented that, in cases where the retailer was not able to separate services, both taxable and nontaxable services, including Internet access, would be taxed. In response, Mr. Dvorak said that the requirement for a separation of taxable and non taxable services is the way most states prevent sales tax avoidance. Mr. Cram said, if a retailer was unable to show the Department how the costs were broken down, the Department would assume that all the costs are attributable to taxable services. He noted, if Internet services were included in the "bundle," it would be clear that it is a nontaxable component. Senator Lee commented that the bill relates to highly technical businesses which know, without a doubt, the cost of every service in the "bundle" or they would not be bundling them. She noted that **SB 1** simply provides a safeguard to ensure that companies will break down the services for the Department of Revenue or be held responsible for taxation on all the services included in the "bundle." She commented that there would be no reason for businesses not to break down the services in a "bundle" because they are in a highly competitive business; therefore, they would not want to increase the cost of a "bundle."

Chairman Corbin observed that the bill involves an issue between companies and the Department of Revenue and does not create any new tax. He agreed with Senator Donovan's comment that the ultimate watch dog is the consumer. He noted that the consumer has the right to call the companies and find out what services in the "bundle" are being taxed. With this, he closed the hearing on **SB 1**.

Senator Clark moved to amend **SB 1** as recommended by the Department of Revenue, seconded by Senator Donovan. The motion carried.

Senator Clark moved to recommend **SB 1** as amended favorably for passage, seconded by Senator Donovan. The motion carried.

The meeting was adjourned at 11:25 a.m.

The next meeting is scheduled for January 29, 2001.

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