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House Taxation Committee

Testimony in Support of House Bill 2060

Presented by Richard Cram

Representative Richard Carlson and Members of the Committee:

The Department of Revenue respectfully submits the following in support of House Bill 2060:

The Department has always interpreted the homestead refund and food sales tax rebate programs as adopted by the Legislature to provide relief to economically disadvantaged elderly and disabled individuals as well as individuals with low income with dependent children residing with them. The Department has never interpreted the homestead refund and food sales tax rebate programs as being available to incarcerated persons. Recently, in a small claims division decision of the Court of Tax Appeals, *In re Nemechek*, Docket No. 2011-3799-DTSC (decision issued December 1, 2011), a state prisoner was successful in obtaining a ruling that the prisoner was entitled to a food sales tax rebate, despite the Department's opposition. A copy of this decision is attached. The Department has appealed this decision to the full Court of Tax Appeals, and that appeal is currently pending. At this point, to the Department's knowledge, two additional incarcerated persons have filed food sales tax rebate claims since Mr. Nemechek's.

House Bill 2060 would bar food sales tax rebate claims from any incarcerated persons filed on or after June 30, 2011. The food sales tax rebate program was repealed in 2012 House Bill 2117, effective Tax Year 2013. This language should bar any food sales tax rebate claims from incarcerated persons for prior years.

The Department has not yet received any homestead refund claims from incarcerated persons, but out of an abundance of caution, the Department recommends that the homestead refund statutes also be amended to clarify that the homestead refund is not available to incarcerated persons, and any such refund claims filed on or after June 30, 2011 are barred.

defined and is not dependent on the actual amount of food sales tax paid by a claimant, provided that some sales tax was actually paid on food purchases. The food sales tax refund is a refundable credit. K.S.A. 2010 Supp. 79-3635 (a) (2).

"Claimant" is defined as a person who has filed a claim for a refund and was during the entirety of 2010, domiciled in Kansas and was a member of a household. The claimant's 2010 income must be less than or equal to \$35,000. Furthermore, the claimant must have a disability, be over 55 years of age, or have a dependent child under 18 residing in the claimant's homestead. K.S.A. 2010 Supp. 70-3633 (c).

The facts here show that the Claimant's income is under \$35,000 and that he is over 55 years of age. The issue is then whether he is a member of a household and whether or not he can be considered to be domiciled in Kansas.

In K.S.A. 2010 Supp. 70-3633 (b), "household" is defined as a claimant and all other persons for whom a personal exemption is claimed who together occupy a common residence.

K.S.A. 2010 Supp. 77-201 *Twenty-third*, defines "residence" as the place adopted by a person as the person's place of habitation and to which, whenever the person is absent, the person has the intention of returning. When a person eats in one place and sleeps at another, the place where the person sleeps shall be considered the person's residence. So, even though the Claimant is in prison, there is no controverting evidence that he does anything but sleep in a usual place, which is likely the bunk in his cell. Thus for the period he is incarcerated, his residence is his cell. Despite the unique circumstances surrounding the Claimant's situation, the Claimant is hardly absent from his cell. It would seem that the Claimant has little choice in returning to any other place than the cell that he inhabits. There is no evidence that he has the intent to return anywhere else. The statute does not place qualifications on who can be a person and does not require a voluntary, affirmative adoption of a particular place of habitation. Thus, for purposes of K.S.A. 2010 Supp. 77-201 *Twenty-third*, the Claimant's residence is generally speaking the prison and specifically, his cell, both of which are in the State of Kansas.

Regulations have the force and effect of law. *J.G. Masonry, Inc. v. Department of Revenue*, 235 Kan. 497, 500, 680 P.2d 291 (1984) (citations omitted); *Jones v. The Grain Club*, 227 Kan. 148, 150, 605 P.2d 142, (1980). Therefore, one must also consult the Department's regulations on determining qualifications for food sales tax refunds.

K.A.R. 92-19-200 (a), for purposes of the food sales refund act, further defines "member of a household." However, that provision deals with other members of the household than the claimant himself. The Claimant has appropriately claimed his personal exemption for Kansas Income Tax pursuant to K.S.A. 2010 Supp. 79-

concerning food sales tax refunds do not specifically exclude otherwise qualifying incarcerated individuals from qualifying for food sales refunds.

The Claimant in this matter has the burden of proof to show that he should qualify for the food sales tax refund. *In re Appeal of Ford Motor Credit Co.*, 275 Kan. 857, 69 P.3d 612 (2003). The legislature's sole stated purpose for the food sales tax refund is to provide for a refund to those entitled thereto. K.S.A. 79-3632. There are numerous hurdles for a potential claimant to qualify for the refund and one's penal status is not among those. The facts show that the Claimant is denied a refund solely because he is incarcerated and that he would otherwise qualify for a food sales tax refund. It would be reasonable to assume that the legislature did not intend for prisoners to qualify for the food sales tax refund and to that end the legislature may amend the law or the Department may promulgate regulations to address this issue.

REFUND GRANTED

Small Claims Hearing Officer: Carl Edwards

Any party to this appeal who is not satisfied with the final decision of the Hearing Officer may appeal this decision to the regular division of the Kansas Court of Tax Appeals. The appeal must be received within 30 days of the mail date using the enclosed form.

2013 House Bill 2060b Fiscal Note

Introduced as a House Bill

Brief of Bill

2013 House Bill 2060, as introduced, relates to food sales tax refunds and homestead property tax refunds.

New Section 1 of the bill provides that no claim for the refund of certain retailers' sales taxes paid upon food filed on or after June 30, 2011 shall be paid or allowed for any person confined in any correctional facility, any juvenile correctional facility, any correctional facility of the federal bureau of prisons located in the state of Kansas, or any city or county jail facility in the state of Kansas.

Section 2 of the bill amends K.S.A. 2011 Supp. 79-4052 to provide that for the purpose of this act, "homestead" shall not include any correctional facility, any juvenile correctional facility, any correctional facility of the federal bureau of prisons located in the state of Kansas, or any city or county jail facility in the state of Kansas. The bill also provides that "claimant" shall not include any person confined in any correctional facility, any juvenile correctional facility, any correctional facility of the federal bureau of prisons located in the state of Kansas, or any city or county jail facility in the state of Kansas.

Section 3 of the bill amends K.S.A. 79-4505 to provide that No claim filed on or after June 30, 2011, in respect of property taxes levied in any year shall be paid or allowed for any person confined in any correctional facility, any juvenile correctional facility, any correctional facility of the federal bureau of prisons located in the state of Kansas, or any city or county jail facility in the state of Kansas.

The bill shall be effective after its publication in Kansas statute book.

Fiscal Impact

The Department has interpreted the current food sales tax rebate and homestead refund statutes as not applying to incarcerated persons. The small claims division of the Court of Tax Appeals recently awarded a state prisoner a food sales tax rebate claim, despite the Department's opposition. The proposal should eliminate the risk any future claims by incarcerated persons would be successful.

Administrative Impact

None.

Administrative Problems and Comments

The bill would bar food sales tax rebate claims from any incarcerated persons filed on or after June 30, 2011. The food sales tax rebate program was repealed in 2012 House Bill 2117, effective Tax Year 2013. This language should bar any food sales tax rebate claims from