

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 11:00 a.m. on February 13, 2002, in Room 519-S of the Capitol.

All members were present except: Senators Jenkins and Pugh

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

Conferees appearing before the committee: Richard Cram, Kansas Department of Revenue
Mike Reece, AT&T
Mark Beshears, Sprint

Others attending: See attached list.

The minutes of the February 12, 2002, meeting were approved.

Senator Corbin opened a discussion on a previously heard bill, **SB 372—Sales taxation; sourcing of mobile telecommunications services.**

Richard Cram, Kansas Department of Revenue, responded to the suggested amendments offered by John Cmelak of Verizon Wireless at the hearing as follows (Attachment 1):

- Include federal law in the Kansas statute for the benefit of state tax law researchers.

The Department feels that persons dealing with mobile telecommunications services will need to be very familiar with the MTSA provision; therefore, the addition of this provision will not necessarily be clarifying.

- Modernize the terms “intrastate” and “interstate” as they relate to wireless calls.

Mr. Cram reported that Mr. Cmelak has agreed with the Department that it is not necessary to statutorily define the terms as they relate to wireless calls because they are not used in the Kansas statute imposing sales tax on mobile phone services.

- Repeal the requirement that the Department and a telecommunications retailer enter into a written agreement identifying the methodology to be used in determining the taxable portion of the selling price of bundled services.

The Department strongly opposes the request that the written agreement requirement be repealed because the requirement was negotiated with the telecommunications industry last year when **SB 1** was passed as a preventative measure to eliminate potential disputes that otherwise could arise at the time of audit. Mr. Cram called the Committee’s attention to a copy of the proposed written agreement attached to his written testimony.

- Add a requirement that a mobile telecommunications service customer must first contact the home service provider in writing if a dispute arises concerning the tax, charge, or fee before a lawsuit can be filed.

Mr. Cram noted that the Department is neutral to this suggested amendment; however, he pointed out that, under current Kansas law, a consumer has an administrative remedy to seek a sales tax refund, and no suit can be filed on a sales tax refund claim unless the Department fails to act on the claim within six months.

Mr. Cram noted that the suggestion that the act apply to customer bills issued after August 1, 2002, is

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consistent with the MTSA; therefore, the Department has no objections to that change.

Mike Reece, AT&T, expressed concerns with regard to the bundling issue. He explained that, when the telecommunications industry brought the bundling issue to the Legislature in **SB 1** last year, it was brought with the understanding that books and records would demonstrate what was taxable and what was not taxable, and the ultimate authority of determining what was taxable and not taxable would still lie with the Department. He noted that the Department asked for an amendment requiring a written pre-audit agreement within 90 days of billing bundled services. Tax consultants at AT&T continue to be concerned about the pre-audit agreement even with the 90 day period. Mr. Reece contended that whether proper records are presented before or after the audit does not make that much difference. He also noted that no other state requires a pre-audit agreement, and no other taxpayer in the state is required to enter into a pre-audit agreement in order to prevent problems from developing down the road.

Mark Beshears, Sprint, commented that Mr. Cmelak's suggested amendment to incorporate the federal act into the bill involves a stylistic issue; therefore, he deferred to the Revisor's decision on how it should be presented. He agreed with Mr. Cram's opinion that persons researching this area will find the correct reference. With regard to the definition of the terms "interstate" and "intrastate," he confirmed Mr. Cram's statement that Mr. Cmelak agrees with the Department that the terms are no longer an issue. With regard to the bundling provision, Mr. Beshears agreed with Mr. Reece that no other state requires a written agreement. However, he noted that Sprint has not attempted to determine whether or not the written agreement would be workable. In looking at the sample agreement furnished by Mr. Cram, he believes that Sprint could resolve a few differences through an agreement with the Department rather than through statutory language. With regard to the suggested customer remedy provision, Mr. Beshears noted that the issue has never been a problem in Kansas wherein the local tax is centrally administered by the Department of Revenue, but has occurred in states such as Florida, Texas, South Carolina, Illinois, and Louisiana which have municipalities that administer local taxes. Mr. Beshears also agreed with Mr. Cram and Mr. Cmelak that the effective date should coincide with the federal enactment on August 1.

With regard to the proposed effective date, Don Hayward, Revisor of Statutes Office, suggested that, the bill be amended on page 6, line 20, by striking "The" and inserting "On and after August 1, 2002."

Senator Lee moved to adopt the amendment to change the effective date of **SB 372** as proposed by Mr. Hayward, seconded by Senator Donovan. The motion carried.

Senator Lee moved to recommend **SB 372** favorably for passage as amended, seconded by Senator Clark. The motion carried.

The meeting was adjourned at 11:15 a.m.

The next meeting is scheduled for February 18.

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