

MINUTES

2015 SPECIAL COMMITTEE ON TAXATION

December 9, 2015
Room 548-S—Statehouse

Members Present

Senator Ty Masterson, Chairperson
Representative Marvin Kleeb, Vice-chairperson
Senator Tom Holland
Senator Julia Lynn
Senator Jeff Melcher
Senator Greg Smith
Representative Ken Corbet
Representative Mark Hutton
Representative Jerry Lunn
Representative Marc Rhoades
Representative Tom Sawyer
Representative Kathy Wolfe Moore

Member Absent

Senator Steve Abrams

Staff Present

Chris Courtwright, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Mark Dapp, Kansas Legislative Research Department
Scott Wells, Office of Revisor of Statutes
Gordon Self, Office of Revisor of Statutes
Adam Siebers, Office of Revisor of Statutes
Debbie Bartuccio, Committee Assistant

Others Attending

[See attached list.](#)

**Wednesday, December 9
Afternoon Session**

Welcome, Approval of Minutes

Chairperson Masterson called the meeting to order at 2:33 p.m.

Representative Brunk moved, seconded by Representative Rhoades, to approve the minutes of the November 5-6, 2015, meeting. The motion passed.

Tax Credit and Exemption Periodic Review Structures

Chairperson Masterson recognized Chris Courtwright, Principal Economist, Kansas Legislative Research Department (KLRD), who provided an overview of a document concerning periodic tax expenditure reviews by other states ([Attachment 1](#)). |

The information was compiled from multiple e-mails from Richard Cram, Kansas Department of Revenue, who had contacted other states to identify the state processes concerning periodic reviews of current sales tax exemptions and income tax credits. The document included information from Arizona, California, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, New Mexico, Ohio, Oklahoma, Oregon, South Dakota, Washington, West Virginia, and Wisconsin. Mr. Cram noted several states require a tax expenditure report to be done annually, which the Department of Revenue does annually. The report is published on the Department of Revenue website.

Mr. Courtwright highlighted two new laws in Oklahoma.

- The Incentive Evaluation Act (62 O.S. SS 7001-7005) created the incentive Evaluation Commission, charged with ensuring state incentives are evaluated at least once during every four-year period, establishing evaluation criteria, and providing a time line for implementation. This act went into effect November 1, 2015.
- Under 46A O.S. Sec. 62, any economic incentive provision enacted after January 1, 2016, is required to include a measurable goal or goals. In this measure, “incentive” is defined as any provision available to a business entity in the form of a credit, exemption, deduction, or rebate pertaining to a state tax liability of any kind; any grant, loan or financing program offered by the state or a state-beneficiary public trust; or any program for incentive payments from the state. This law goes into effect January 1, 2016.

Representative Rhoades asked Mr. Courtwright whether any states had used the sunset concept for tax exemptions. Mr. Courtwright responded the sunset concept had not been used extensively by the states.

Mr. Courtwright next referenced the following three documents:

- A response was provided for the question concerning the amount of corporate income tax paid by the top 6 corporate income taxpayers. For tax year 2013, the top 6 corporate income taxpayers (largest in tax liability) paid a total of \$52.647 million in corporate income tax ([Attachment 2](#)); |
- A spreadsheet showing the effects on revenues of repeal of all sales tax exemptions except those mandated by federal law or the *Kansas Constitution*, ingredient or component part related exemptions, and any other involving business-to-business services ([Attachment 3](#)); and
- A document containing responses to questions concerning bioscience companies and the number of retailers who are registered with Kansas retailer's sales or use tax accounts ([Attachment 4](#)). |

Senator Holland inquired if it would be possible to obtain data for the non-C Corp entities for the time period before and after the tax laws changed. He also asked if the Department of Revenue had distributed the tax data for 2014. Mr. Courtwright responded he would need to check with the Department of Revenue concerning these questions.

There were no other questions.

Written testimony was provided by Brad Smoot, Attorney at Law, concerning the Insurance Premium Tax Employee Salary Credit ([Attachment 5](#)).

Committee Comments and Recommendations

Chairperson Masterson opened discussion and possible action on tax strategies and the process of evaluating the tax system to achieve a fairer, flatter tax. He indicated possible items for consideration would include the practice of sunseting tax exemptions and credits, a review of tax credits that have gone unused for years, and the assignment of sales tax exemptions.

Representative Rhoades said an evaluation needs to be fair concerning how entities are reviewed, and there needs to be a measure of effectiveness to evaluate the merits of awarding the tax exemptions.

Senator Holland stated if the desire is to implement a sunset, then it should be across all tax breaks, with implementation of the sunsets staggered over multiple years. He suggested the tax committees be assigned the responsibility for evaluating the tax laws.

Senator Lynn reiterated the need to set parameters for evaluation and suggested a Committee recommendation be that each house tax committee develop a mechanism for evaluating the tax exemptions. This should be an ongoing process and embedded in the legislative processes already in place.

Senator Melcher stated there should be an across-the-board repeal of the tax exemptions, excluding those required by federal and state law.

Senator Smith agreed a hard sunset is absolutely mandatory. Once this is done, there should be a random process for periodic review and justification of the exemptions. He expressed interest in Oklahoma's law, which requires economic incentives to have measurable goals.

Representative Rhoades asked if there would be some wisdom in working toward developing the evaluation process during the next Legislative Session, with a secondary goal of establishing the hard sunset.

Senator Melcher questioned whether government should be excluded from evaluation and suggested a healthy discussion occur concerning local and county government tax issues.

Representative Corbet, noting the importance of taking into consideration the effects of any changes made to tax exemptions, suggested consideration be given to implementing changes in small rather than large steps.

As an alternative idea, Senator Lynn suggested a task force or commission, whose members would be subject-matter experts, be appointed by the Governor to address this issue and develop recommendations. These recommendations would then be subject to review by the tax committees, prior to approval by the Legislature and Governor.

Senator Melcher said this Committee could make a recommendation for date-certain repeals, as well as an additional recommendation for the tax committees to put together the experts necessary to consider each of the tax issues.

Representative Sawyer questioned the goal of the date-certain repeals, stating when evaluations have been done in the past, it was determined there was a good, public policy for making the exemptions. He said if the goal is to raise revenue, he did not believe this would occur.

Chairperson Masterson replied the goal is not to raise funds, but rather to create a system that is more fair and equitable.

Senator Holland stressed the importance of measuring results whenever new policies are implemented; he said the review of the state's tax policies is worth investing the time in. He said a review of this kind needs to be performed by the tax committees and not by a special committee. He suggested the 2016 Legislature might develop the recommendations on how to proceed with the process of evaluating the tax policies and perform the review of the tax programs beginning in 2017.

Representative Hutton agreed with using a methodology that requires an evaluation of the merits of tax exemptions. He remained opposed to sunsets, as he believes they inject another level of politics into the decision process that could deter members from making tough decisions and lead to crisis management. He expressed an interest in the Oklahoma model.

Senator Melcher stated his goal was not to increase revenue but to put everyone on a more level playing field when it comes to paying taxes.

Senator Lynn referred to the nationwide fair tax movement and said the State needs to establish parameters to evaluate recommendations. She suggested the Committee recommend that metrics and a process be developed by the tax committees for review of the tax exemptions, as a means to achieve the fairest decision when evaluating the budget and the revenues being generated.

Representative Wolfe Moore, agreeing with the need for an evaluation process, expressed concern for moving too quickly and creating crisis situations by using a sunset process.

Senator Smith, commenting on the need for a sense of urgency, said a hard sunset would apply some seriousness to the tax committees completing the work.

Chairperson Masterson expressed his appreciation to Committee members for their discussion and recommendations. He summarized the Committee's recommendations as follows:

- To task the standing tax committees with achieving the recommendations;
- To develop a process with metrics for evaluation of tax policies and tax exemptions; and
- To establish a hard sunset at some point in time with the schedule determined by the standing tax committees.

Representative Lunn moved, seconded by Senator Melcher, to recommend the standing committees on taxation consider using a hard sunset date when proposing to repeal tax exemptions. Senator Holland stated he would support a sunset, provided there was a schedule to make the workload manageable for reviewing the tax policies. He also suggested that a mandatory sunset provision be included in any legislation for new tax incentives. The motion passed (Representative Sawyer – recorded voting no).

There was discussion concerning the need for metrics and entities to be included or not included in the sunset provision, *i.e.*, government, non-profit, for profit, property tax exemptions, value-added.

Chairperson Masterson stated a draft recommendation would be submitted for review by Committee members with language to include the following:

The 2016 standing tax committees develop a process for evaluating tax policies with measurable goals and standards, recommending a sunset date or a sunset schedule, and developing parameters for the evaluation of any new tax exemptions.

Senator Holland stated it appeared the work to be included in 2016 would be for the standing committees to develop a framework for evaluating tax policies, with the establishment of any sunset dates not occurring until 2017 or later.

Representative Brunk stated his encouragement for the addition of a concept promoting the importance of a stable and predictable tax system.

Chairperson Masterson adjourned the meeting at 3:52 p.m.

Prepared by Debbie Bartuccio
Edited by Reed Holwegner

Approved by the Committee on:

January 19, 2016
Date