

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson Senator Audrey Langworthy at 11:10 a.m. on January 19, 2000, in Room 519-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee: Marlee Bertholf, Kansas Chamber of Commerce & Industry
Shirley Sicilian, Kansas Department of Revenue
David Prager, Prairie Band Potawatomi Nation
Ralph Simon, Jr., Attorney General, Kickapoo Tribe

Others attending: See attached list.

The minutes of the January 18, 2000, meeting were approved.

Marlee Bertholf, Kansas Chamber of Commerce and Industry, requested the introduction of a bill dealing with the research and development income tax credit. She noted that the sunset date for this tax credit has been extended several times since its inception. The proposed bill would eliminate the sunset date and make research and development activity a permanent tax credit. (Attachment 1)

Senator Hardenburger moved to introduce the bill, seconded by Senator Goodwin. The motion carried.

SB 408—Confidentiality requirements concerning income tax returns

Shirley Sicilian, Kansas Department of Revenue, called attention to written testimony submitted by Tracy Diel, Executive Director of the Kansas State Gaming Agency. Mr. Diel supports the bill but was unable to attend the meeting. His testimony explains how the provisions of the bill will allow his agency to determine if an applicant for a gaming license at a tribal casino has filed and/or paid income taxes to the State of Kansas. (Attachment 2) Ms. Sicilian explained that **SB 408** allows a statutory exemption to allow the State Gaming Commission to review tax records when performing background examinations on gaming employees and on manufacturers selling certain equipment to gaming industry firms in Kansas. (Attachment 3)

SB 409—Concerning the incidence of and liability of certain excise taxes

Ms. Sicilian stated that the intent of **SB 409** is to move the legal incidence of the motor fuel and the cigarette and tobacco taxes to the consumer. She explained that the proposal was prompted by two recent court cases which would prohibit the Department of Revenue from collecting motor fuel tax on Native American reservations. She discussed legislation relating to the situation and the 1998 U.S. District Court opinion on the current system. The bill is an alternate approach while the ultimate outcome of the current system is under appeal and still unknown. (Attachment 4)

David Prager, general counsel for the Prairie Band Potawatomi Nation, testified in opposition to **SB 409**, referring to information found in the written testimony of James M. Potter, Treasurer, Tribal Council, Prairie Band Potawatomi Nation. Mr. Prager noted that the Prairie Band currently imposes tribal cigarette and motor fuel taxes on products sold on its reservation and that the collection of state cigarette and motor fuel taxes in addition to the tribal taxes would impair and damage the Prairie Band's system of tribal taxation. He emphasized that double taxation of products or services sold on Indian reservations is prohibited by federal law because it impairs tribal government. In addition, he discussed the Kansas Supreme Court finding that Indian reservations are not to be considered a part of the state of Kansas. The Supreme Court has also

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acknowledged that the Kansas Act for Admission prohibits the impairment of Indian rights. He contended that, contrary to the Act for Admission, **SB 409** would deem the Indian reservations to be within the state of Kansas. Mr. Prager asked the Committee consider the alternative legislation described in Mr. Potter's written testimony. (Attachment 5)

In conclusion, Mr. Prager informed the Committee that the tribal road and maintenance department spends millions of dollars per year on tribal roads and has offered to pay for off reservation road improvements. The tribal motor fuel tax is dedicated for use for improvement of reservation roads and, therefore, replaces much of the responsibility for maintenance which would otherwise fall on the county. He urged the Committee to recognize and respect the governmental purposes for which the sales tax collected by the tribe is used and to disapprove passage of the bill.

Senator Langworthy asked how many members of the tribe reside on the Potawatomi reservation. In response, Mr. Prager said there are approximately 500 tribal residents.

Ralph Simon, Jr., Attorney General for the Kickapoo Tribe, followed with further testimony in opposition to **SB 409**. He stated that the Kickapoo tribe echos the majority of the comments made by Mr. Prager. Mr. Simon cautioned that the bill would strike at the heart of tribal governments in determining their own destiny. He stressed that the Kickapoo tribe relies heavily on their own sales taxes to fund their police and fire department activities and legal service operations. He pointed out that, while the amount of sales taxes collected by the tribe is significant to the tribe, it is a "drop in the bucket" for the state. He strongly urged the Committee not to interfere with tribal governments and tribal sovereignty. He emphasized that the Kickapoo tribe needs the income from the sales tax it imposes to continue functioning as a viable government.

In response to a question by Senator Langworthy regarding the amount of sales tax imposed on Kickapoo gasoline sales, Mr. Simon said the sales tax is currently six cents a gallon. He contended that, although that amount is considerably less than the state rate, there are seldom long lines of cars waiting to fill their cars with gas. He confirmed that the tribe is contemplating raising the sales tax on gasoline. He also indicated that 600 members of the Kickapoo tribe (one-half of the membership) live on the reservation.

In response to questions from Senator Lee regarding the collection of federal tax on gasoline, he noted that the tribe collects federal sales tax because reservations are not exempt from the jurisdiction of the U.S. Government. He reiterated that the Kansas Act for Admission specifically exempted reservations from the jurisdiction of the state. Senator Donovan requested that the Committee be provided information on how much gasoline is sold on reservations.

Senator Langworthy announced that, due to a lack of time, the hearing scheduled on **SB 410**, concerning benefits and incentives for statutory compliance by certain taxpayers, would be rescheduled for hearing at a future meeting.

The meeting was adjourned at 12:03 p.m.

The next meeting is scheduled for January 20, 2000.