Approved: February 12, 2002
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:35 a.m. on February 7, 2002, 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: Duane Goossen, Director of the Budget
E. Dean Carlson, Secretary, Department of Transportation
Patrick Hurley, Economic Lifelines
Tom Palace, Petroleum Marketers and Convenience Store Association
Tom Whitaker, Kansas Motor Carriers Association
Justin Holstin, Propane Marketers Association of Kansas
Ken Suter, SACO Petroleum Corporation
Gary Davis, Leavenworth Amoco Service
Tony Tanking, Ag Partners Coop, Inc., Hiawatha
Karl Peterjohn, Kansas Taxpayers Network
Marlee Carpenter, Kansas Chamber of Commerce & Industry
Mark A. Burghart, Kansas Corporate Coalition
Richard Cram, Kansas Department of Revenue

Others attending: See attached list.

The minutes of the February 5, 2002, meeting were approved.

SB 452–Financing for comprehensive transportation program; vehicle registration fees; taxation of motor vehicle fuels

Duane A. Goossen, Director of the Budget, noted that **SB 452** raises the tax on motor fuel by one cent and raises registration fees on all vehicles by three percent. In addition, he noted that the bill is part of the Governor's budget recommendation and that it was proposed as an alternate way to provide funding for the Comprehensive Transportation Program. He called attention to a chart showing the history of the sales tax/State General Fund demand transfer during the first three years of the Comprehensive Transportation Program, noting that, by statute, $89 million was to be transferred in FY 2000; however, only $62 million was transferred. The statutory amount required for the second year was $90 million; however, only $51 million was transferred. For the current fiscal year, $120 million should be transferred; however, it is estimated that only $95 million will be transferred. For FY 2003, $147 million should be transferred; however, the Governor recommends no transfer from the State General Fund to the Highway Fund. Mr. Goossen emphasized that the loss must be made up from some other source or a cut in highway projects will be necessary. He pointed out that, over the remaining seven years of the Comprehensive Transportation Program, the bill is expected to raise $157 million. While the bill would avoid the necessity of immediate project cuts, further reductions in revenue will require a corresponding elimination of projects. (Attachment 1)

E. Dean Carlson, Secretary, Kansas Department of Transportation, informed the Committee that an increase in the motor fuel tax as provided in **SB 452** would provide approximately $18 million per year for the state highway fund, and the registration fee increase would provide approximately $4 million per year. The increased amounts would amount to $154 million over the remaining life of the Comprehensive Transportation Program. He explained that bill provides for a 75 cent increase in the registration fee for an automobile and approximately $58 for the largest commercial vehicle. He noted that currently the Department is approximately $300 million "in the hole" on the program. Mr. Carlson emphasized that, although the passage of **SB 452** would solve the Department's problem for one year, he is concerned that next year both the new Governor and the Legislature will once again decide to suspend the sales tax transfer. If the demand transfer is not restored over the life of the program, the loss to the program will amount to approximately $1.5 billion. Without the Governor's suggested tax increases, the Department's work will be reduced to maintenance, research projects, and priority bridges for the remainder of the program. He noted that, without the prospect of additional demand transfers, the Department will be forced to cut projects immediately after the 2002 Legislative Session. (Attachment 2)

Patrick Hurley, representing Economic Lifelines, testified in support of **SB 452**. At the outset, he called attention to a copy of a resolution adopted by Economic Lifelines in December 1999 which strongly opposes reductions in funding for the 1999 Comprehensive Transportation Program. He expressed his concern that funding for the project has already lost $91 million the first three years from cuts made by the Legislature. He also expressed his objection to the elimination of the demand transfer in 2003, noting that the demand transfer is one of the key funding components of the program. He expressed his fear that elimination of the demand transfer for one time will become a loss for all times. Mr. Hurley called attention to charts of projected expenditures compiled by the Department of Transportation, pointing out that the statistics indicate that the motor fuel taxes would have to be increased 8 cents immediately and registration fees would have to be raised 30 percent in order to replace the demand transfer over the remainder of the program. In his opinion, Kansas is close to returning to conditions in the early 1980s wherein the Department had funding only for maintenance and a few bridges. In conclusion, he noted that Economic Lifelines recognizes the financial conditions facing the state and intends to return to work with legislative committees and provide support for other suggested revenue alternatives which will allow the funding for the Comprehensive Transportation Program to continue. (Attachment 3)

Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas (PMCA), testified in opposition to **SB 452.** He discussed the tough economic decisions petroleum marketers and convenience stores are facing due to the explosion of the "big box" petroleum retailers who are selling fuel below cost, the effects of 9/11, spiraling health insurance costs, and competition with cross border marketers. He noted that, in reality, the price of gasoline is based on daily competition. Kansas marketers either have to lower their prices to meet the competition or stand firm on their price and watch customers drive a block or two to trade at their competitors. He emphasized that PMCA supports safe, efficient highways because, without them, there is no consumer demand for their product. However, PMCA opposes the bill because the one cent motor fuel tax increase will be added to another one cent increase that will become effective on July 1, 2003. He noted that petroleum marketers and convenience store retailers are in the same economic plight as the state; however, they cannot raise their prices to fill budget deficits because the market place and their competition will not allow that. (Attachment 4)

Tom Whitaker, Kansas Motor Carriers Association, testified in opposition to **SB 452**, noting that his opposition has nothing to do with support for the 1999 Comprehensive Transportation Program. He pointed out that truckers in Kansas currently pay substantial state and federal taxes. He said that the struggling trucking industry simply cannot afford an increase in taxes and registration fees at this time. He called attention to a chart attached to his written testimony which shows that Kansas ranks third in the nation in the amount of total state truck taxes. In addition, he called attention to a graph which illustrates that trucking business failures are at an all time high. (Attachment 5)

Justin Holstin, Propane Marketers Association of Kansas, testified in opposition to the provision in **SB 452** which increases taxes on motor fuels. In his opinion, increasing taxes by one cent on motor fuels, including propane, is an inappropriate step to take in addressing the gravity of Kansas' current financial situation. He noted that, although the bill would not affect the use of propane as a agriculture fuel, it would affect farmers and ranchers who have over-the-road vehicles fueled by propane and who are already struggling to make ends meet. Furthermore, a tax increase would create an economic disadvantage for propane marketers. (Attachment 6)

Ken Suter testified in opposition to **SB 452** as the owner of SACO Petroleum Corporation, which is a distributor of gasoline and diesel products and which also sells convenience store products such as beer and cigarettes. He explained that he lives in Kansas and has stations located in the Kansas City area on both the Kansas and Missouri sides. He emphasized that, when there has been an increase in Kansas' tax on fuel, the volume of his Missouri businesses has increased. He estimates that approximately 25 percent of current sales in Missouri are to Kansas residents. He noted that 70 percent of the Kansas population lives within 30 miles of the eastern border; therefore, more consideration should be given to Kansas being more competitive with Missouri. (Attachment 7)

Gary Davis, Leavenworth Amoco Service, testified in opposition to **SB 452**. He explained that, after purchasing the Amoco station in 1988, he added a convenience store and a car wash. In the first five years, he doubled the volume of gas sold at the location. After a self-service station with a huge state tax difference was opened over the borderline in Missouri just one half mile from his station, his volume dropped by about 400,000 gallons per year in the following four years. He observed that more than half of the vehicles fueling at the Missouri site were from Kansas. He noted that his loss in revenue was shared by several other operators on the Kansas side, and any additional Kansas fuel tax increases will worsen this trend. (Attachment 8)

Tony Tanking, Ag Partners Coop, Inc., of Hiawatha, testified in opposition to **SB 452**. He pointed out that the petroleum industry is one of great volatility which also must deal with the issue of business competition with mass merchandising store chains. In addition, the industry must compete with Native American owned fueling facilities in northeast Kansas wherein every gallon of fuel sold is exempt from Kansas' fuel tax. He noted that the difference in pricing over the past two years has ranged from 15 to 20 cents per gallon below other competitor fuel sites in neighboring communities. The difference in pricing has attracted consumers from 20 to 30 miles away, luring revenue dollars away from local communities as well as from the state. Mr. Tanking said he was told by a representative who once supplied one of the reservations with fuel that the facility was selling approximately 8,500 gallons of unleaded gasoline per day. At the current rate of 21 cents per gallon for 365 days per year, this translates to $651,515.00 in lost revenue for the state. In this regard, he noted that recently the fuel tax exemption for Indian reservations was repealed, requiring that any fuel purchased from a distributor in Kansas or imported into the state be subject to the Kansas' fuel tax. Upon this ruling, several tribes have severed their ties to local distributors and aligned themselves with a Native American tribe in Nebraska which delivers fuel with its own fuel transport. Mr. Tanking said that, in speaking anonymously with individuals on reservation fueling facilities, he was informed that reservations would be able to avoid Kansas' fuel tax because of the acquisition of fuel from a sovereign nation supplier.

Mr. Tanking went on to say that the retail fuel industry encountered one of the toughest years ever in 2001 as margins were squeezed by competition for America's fuel dollar. Over the past five years, profit margins on a national basis for fuel sales at the retail level have been on a continual decline. In conclusion, Mr. Tanking said the proposed fuel tax increase would further widen the gap of competition for retailers not exempt from paying the fuel tax and would provide additional incentive for residents in northeast Kansas to purchase their fuel at reservations. He noted that the primary victims of a fuel tax increase would be the state and Kansas citizens who will have to deal with poorer road quality due to lack of funding. (Attachment 9)

Karl Peterjohn, Kansas Taxpayers Network, gave final testimony in opposition to **SB 452**, describing it as the "Western Missouri Retail Development Act of 2002." He urged the Committee not to recommend any bill which would weaken the private sector in Kansas by placing Kansas firms at a competitive disadvantage with competitors located a short distance away across the border. In addition, he contended that the proposed tax increases will not meet expectations. In his opinion, rasing taxes when Kansas is in a recession will make a bad economic situation worse. Instead, he recommended that Kansas state government reduce its spending appetite. (Attachment 10)

There being no others wishing to testify, the hearing on **SB 452** was closed.

SB 408–Income taxation; definition of business income for purposes of the uniform division of income for tax purposes act

Marlee Carpenter, Kansas Chamber of Commerce and Industry, testified in support of **SB 408**. She explained that legislation was passed in 1996 which clarified that Kansas uses the transactional test to determine what business income should be taxed, not the functional test. Since passage of the legislation, confusion has once again surfaced about the determination of taxable business income. The bill would eliminate the confusion and reaffirm that the transactional test is applied in Kansas. She noted that the bill has no fiscal impact. (Attachment 11)

Mark Burghart, Kansas Corporate Coalition, testified in support of **SB 408**. He noted that the 1996 legislation was a compromise between the Department of Revenue and the business community and was part of an effort to alleviate some negative perceptions of the tax climate in Kansas. He explained that the legislation effectively gave corporate taxpayers an option in terms of how to report income for Kansas corporate income tax purposes. He noted that Kansas has historically utilized the transactions test to determine business income, and **SB 408** confirms that Kansas has, in fact, retained the transaction test. (Attachment 12)

Richard Cram, Kansas Department of Revenue, noted that **SB 408** makes no substantive change to the definition of "business income" in K.S.A. 79-3271(a); however, it deletes language that may have caused confusion as to whether Kansas adopted the functional test. The Department believes that the deletion should help clarify that the 1996 amendment to the definition of business income was not an adoption of the functional test. He noted that the Kansas Supreme Court has held in two cases that Kansas is a transactional test state. (Attachment 13) With this, the hearing on **SB 408** was closed.

Senator Lee moved to report **SB 408** as favorable for passage and that it be placed on the Consent Calendar, seconded by Senator Clark. The motion carried.

The meeting was adjourned at 11:45 a.m.

The next meeting is scheduled for February 11, 2002.