

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on March 2, 2005 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes
Richard Cram, Department of Revenue
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Proponents:

Charles Gregor, Leavenworth/Lansing Area Chamber of Commerce
Ken Daniel, Midway Wholesale
Martin Luther, Luther's Smokehouse Inc.
Donna Homan, Donna's Designs, Inc.
Ross E. Markle, Harris Brothers Cleaners, Inc.
Sharon Funk, Buckeye Corporation
Jamie Bell, City of St. Marys
Kevin Gray, Custom Wood Products, Inc.
William Brannan, Schendel Pest Control, Inc.
Tim Danneburg, City of Olathe
Mike Howewater, Howewater Appliance
Sharon DuBois, Senior Ease
Marlee Carpenter, Kansas Chamber of Commerce
Hal Hudson, National Federation of Independent Business (NFIB)
Bob Corkins, Freestate Center for Liberty Studies
Karl Peterjohn, Kansas Taxpayers Network
Joanna C. Brazil, The Peabody Main Street Association

*written testimony only

*John Lewis, Kansas Press Association, * Diane Costello, Olathe Chamber of Commerce,
*Cliff Sones, Wichita Independent Business Association, *Justin N. Crain, American
Concrete Company, Inc., *Erik Sartorius, City of Overland Park, *Craig & Jeanine
Pumphrey, CPC Bearing, Inc. *Anonymous testimony from a Kansas Taxed Retailer, and
from Cleaver Farm, Chanute, KS.

Opponents:

Randal Allen, Kansas Association of Counties
Larry Baer, League of Kansas Municipalities
Secretary Wagon, Department of Revenue
David Corbin, Department of Revenue

Others attending:

See attached list.

HB 2131 - Delay of destination sourcing rules for sales tax purposes until action of Congress

Mr. Self explained that the bill relates to sales taxation, regarding the streamline agreement and to some of the rules that were required to be in compliance to that agreement. The bill deals with one area that relates to the sourcing of sales.

The Chairman opened the public hearing on **HB 2131**.

Charles Gregor, Leavenworth/Lansing Area Chamber of Commerce, urged the Committee to favorably consider **HB 2131** (Attachment 1). It is a logical and prudent step toward preparing Kansas and Kansas businesses for an eventual smooth and relatively painless transition to a nationwide destination sourcing sales tax system should such become a reality.

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Ken Daniel, Midway Wholesale, appeared in support of **HB 2131**. He stated that the Streamlined Sales Tax Project (SSTP) was a damaging piece of legislation from the small business standpoint (Attachment 2). His testimony included seven myths that he disputed. He provided data that reflected costs to collect sales tax, conversion costs and ongoing destination sourcing costs for Kansas retailers.

Martin Luther, Luther's Smokehouse Inc. stated that half of their Kansas customers are sending jerky to the military with an out of state zip (Attachment 3). He suggested that **HB 2131** would provide the time to develop software when the national laws are passed making it easier for the small businesses to conform to the laws.

Donna Homan, Donna's Designs, Inc. spoke of the bookkeeping difficulties she had experienced in her florist shop (Attachment 4). She stated that the software created by the State of Kansas would not interface with their floral specific software thus creating more accounting problems. She urged the passage of **HB 2131** in order to provide time to allow the floral association to lobby to defeat SSTP at the national level.

Ross E. Markle, Harris Brothers Cleaners, Inc. rose in support of **HB 2131**. He stated that destination sourcing as required by the current SSTP legislation puts another burden on their limited resources and severely restricts their option of running their small business (Attachment 5). The required cost of the software and hardware alone is simply not an added expense they can absorb.

Sharon Funk, Buckeye Corporation, testified in support of **HB 2131** (Attachment 6). She said that the new point of destination sales tax has cost their company hundreds of extra man hours involving their sales staff and bookkeepers. The cities where their stores are located have lost thousands of dollars in sales tax revenue.

Jamie Bell, City of St. Marys appeared to endorse the passage of **HB 2131** (Attachment 7). He spoke of the economic challenges facing small towns today. As a City Manager, he stated that he worried about any new initiatives offered up by the State Legislature or Governor that clearly do not have the best interest of small communities in mind.

Kevin Gray, Custom Wood Products, Inc. stated that the past year and a half they had been struggling to meet the deadlines for compliance (Attachment 8). Good-intentioned lawmakers were focused on the loss of revenue from internet sales and products shipped into Kansas across state lines, however the impact on the small businesses, they were trying to protect, were hurt the most. He urged passage of **HB 2131**.

William Brannan, Schendel Pest Control, Inc. appeared in support of **HB 2131**. He stated three reasons that he opposed SSTP; prohibitive cost of software and annual service fees to his small business, increased time to prepare tax reports and lack of compensation for the extra effort required (Attachment 9).

Tim Danneburg, City of Olathe, stated that Olathe continued to support federal initiatives to capture internet sales revenue (Attachment 10). Although they recognized that states must first take steps to prepare for such collection, Olathe opposed state efforts to implement destination source taxing **prior** to any reasonable assurance that the federal government would take action.

Mike Howewater, Howewater Appliance, appeared in support of **HB 2131** (no written testimony). He illustrated that bookkeeping duties had increased significantly for his small business by providing adding machine tapes required for the process before and after the advent of destination sourcing rules.

Sharon DuBois, Senior Ease, testified about the difficulty she has encountered in her small business as a result of the implementation of the destination sales tax. She had a software package that has worked in the past, however now under the new rules, she is forced to be creative in her reporting procedure. She urged passage of **HB 2131** (Attachment 11).

Marlee Carpenter, Kansas Chamber of Commerce, urged the committee to consider delaying implementation of the destination sourcing requirements until Congress had implemented SSTP at the national level (Attachment 12). She spoke of concerns, expressed by their members, regarding the Department of Revenue's

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database and although they have made the Department aware of those problems, many of those issues had not been addressed.

Hal Hudson, National Federation of Independent Business, (NFIB) stated that **HB 2131** would delay implementation until such time as the U.S. Congress enacted legislation that would enable Kansas to enforce collection of retail sales tax from remote sellers. SSTP hits the smallest businesses of Kansas and he urged delay until it could be applied across the board to in-state and out-of-state sellers equally (Attachment 13).

Bob Corkins, Freestate Center for Liberty Studies, stated that the debate boiled down to two reasons used to justify destination-sourcing. First, large multi-state retailers wanted a uniform national rule to simplify their tax compliance. Second, governmental units wanted a uniform national rule in order to facilitate sales tax on internet transactions. He stated that both of those objectives could be met without destination sourcing with a national policy of origin-based sourcing. In fact, a nationally uniform origin-sourcing law would encourage states and their political subdivisions to compete for lower sales tax rates (Attachment 14).

Karl Peterjohn, Kansas Taxpayers Network, stated that when Kansas passed a destination sourcing bill in the 2003 legislature it resulted in the ripple effect that has continued to hurt the state in general and Kansas retailers in particular. **HB 2131** puts Kansas back in a position where this issue, which is really national and international in many key aspects, can be resolved nationally (Attachment 15).

Joanna C. Brazil, The Peabody Main Street Association rose in support of **HB 2131**. She stated that since SSTP had not been enacted at the federal level, Kansas should continue to prepare for it by developing a process that is less intimidating and burdensome for Kansas businesses (Attachment 16).

The following written testimony (Attachment 17) was submitted in favor of **HB 2131** by eight conferees: *John Lewis, Kansas Press Association, * Diane Costello, Olathe Chamber of Commerce, *Cliff Sones, Wichita Independent Business Association, *Justin N. Crain, American Concrete Company, Inc., *Erik Sartorius, City of Overland Park, *Craig & Jeanine Pumphrey, CPC Bearing, Inc. *Anonymous testimonies from Cleaver Farm, Chanute, KS and a Kansas Retailer.

Opponents:

Randal Allen, Kansas Association of Counties, testified in opposition to **HB 2131** (Attachment 18). He stated the data provided by KDOR regarding local sales and use tax distributions by county and city reflects a positive picture for smaller rural counties, while still positive for larger, urban counties. He questioned why they should revert to the former system, while they await congressional action of the streamlined sale tax, when the new destination based sourcing rules had actually served Kansas well.

Larry Baer, League of Kansas Municipalities, appeared in opposition to **HB 2131** (Attachment 19). He stated that KDOR together with thousands of businesses in the State have expended much time, energy and money to facilitate this change and have successfully made the conversion. If the rules are changed again, he asked what message would they be sending those businesses that have struggled and moved to compliance. It would only reestablish confusion that had been resolved.

David Corbin, Department of Revenue, reviewed the background of destination - based sourcing from beginning discussions that lead up to the Streamlined Sales and Use Tax Agreement, signed in Chicago by 33 out of 34 states, on November 12, 2000. The Kansas representatives were Senator Corbin and a staff member from KDOR. He asked the Committee to consider whether the purpose of the bill was to delay the implementation of Streamlined sales tax, in order for businesses to come into full compliance or if it was to kill the streamlined sales tax issue and put Kansas in an isolated position. The issue was whether they want to make the rules fair and equitable for the downtown merchants so they may compete with the out-of-state vendors.

Secretary Wagon, Department of Revenue rose in opposition to **HB 2131**. Her testimony included the background of taxation of remote sales, Phase 1, 2 and 3 of streamlined sales tax project, time line of Kansas Legislative Action, progress of the program, voluntary use tax remittance from remote retailers, sales tax returns filed and jurisdiction reported, and the conclusion of the Department (Attachment 20). She said the

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compliance date was January 1, 2005 therefore there would not be a complete picture until February 25th, and the small retailers, who file only quarterly, wouldn't be recognized until April 25th. Early results from collections are positive. She spoke of alternative methods that KDOR had implemented to aid in distributing the sales tax in an appropriate manner for many retailers. She explained the purpose of the relaxed enforcement period was to provide service not sanctions. She reviewed the Sales and Use Tax distributed to counties for CY 2003, 2004 (Attachment 21), and a Forrester document for the National Governor's Association and the National Conference of State Legislatures and an excerpt from The University of Tennessee (Attachment 22).

Due to remaining multiple questions the Chairman requested that Secretary Wagnon return tomorrow for continuation of discussion.

The Chairman adjourned the meeting at 11:00 a.m. The next meeting is scheduled for March 3, 2005.