

MINUTES

SPECIAL COMMITTEE ON ASSESSMENT AND TAXATION

November 9, 2005
Room 519-S—Statehouse

Members Present

Representative Kenny Wilk, Vice Chairman
Senator Pat Apple
Senator Les Donovan
Senator Janis Lee
Senator Roger Pine
Representative Virginia Beamer
Representative Pat George
Representative Tom Holland
Representative Kasha Kelley
Representative Bruce Larkin
Representative Arlen Siegfried
Representative Tom Thull

Members Absent

Senator Barbara Allen, Chairman

Staff Present

Chris Courtwright, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Gordon Self, Office of the Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees

Alan Conroy, Director, Kansas Legislative Research Department

Other Attending

See attached list.

Wednesday, November 9 Morning Session

The meeting was called to order at 10:00 a.m. by Representative Kenny Wilk, Vice Chairman, who advised the members of the Committee that they would work toward completing their tasks in one day instead of the proposed two days.

The Chairman encouraged the Committee to study the full report on the estimates for the State General Fund generated by the Consensus Group, which is made up of members from the Legislative Research Department, Division of the Budget, Department of Revenue, and three consulting economists from state universities.

Chris Courtwright briefed the Committee on the revised Consensus estimates that significantly increased the FY 2006 estimate and developed the first estimate for FY 2007. For FY 2006, the estimate was increased by \$221.0 million, and represents a 6.5 percent growth forecast above actual FY 2005 State General Fund (SGF) receipts (Attachment 1).

The Vice Chairman stated that for clarification purposes, the Legislature needed a report that reflects total tax collections and how those funds are distributed between the SGF and other funds.

Alan Conroy, Director, Kansas Legislative Research Department, explained the profile of the SGF Receipts, Expenditures and Balances as Projected FY 2005-FY 2008 (Attachment 2). He reviewed a number of SGF demands for upcoming years and looked at projected SGF ending balances.

A memorandum from Chris Courtwright on the impact of various potential sales tax rate increases was distributed (Attachment 3).

Topic 1 – Property Tax Valuation of Historic Property

Chris Courtwright provided the background on a 2004 Nebraska constitutional amendment, followed by a review of the Committee activities in September and October (Attachment 4). He briefed the Committee on the preliminary recommendations made at the October meeting.

It was the consensus of the Committee to accept the language presented by staff as the Committee's recommendation.

Topic 2 – Tax Treatment of Not-For-Profit Entities

Chris Courtwright provided the background that began in the 2003 Session through the 2005 Legislative Coordinating Council's charge to review the sales and property tax treatment of not-for-profit entities and make any appropriate policy recommendations to the 2006 Kansas Legislature (Attachment 5). He reviewed the current sales tax treatment, stating that the Department of Revenue in 2004 estimated that there were more than 8,000 501(c)(3) organizations in the state. He presented policy options that had been discussed during previous meetings for the Committee's consideration.

The Committee recommended that the standing tax committees develop criteria similar to those utilized in the early 1970s to help the Legislature evaluate all future requests for sales tax

exemptions. Specifically, some of those criteria should include whether a proposed exemption: (1) helps maintain the sales tax as a final tax on consumption; (2) makes the tax more easily administered; (3) targets a broad class or a narrow, special interest; (4) establishes an unfair competitive advantage for one group relative to another; and (5) causes the overall public benefit to outweigh the loss of revenue.

The Committee did not choose to recommend expanding sales tax exemptions to all 501(c)(3) entities in the state.

Finally, the Committee made no recommendations regarding potential changes to the property tax treatment of not-for-profit organizations.

Afternoon Session

Mr. Conroy distributed a memorandum on expenditures that were considered “off budget” (Attachment 6). He explained the memorandum contained the name of the expenditure, the fiscal year that the change occurred, the amount that was removed, and, in parentheses, an estimated amount for FY 2006. An excerpt from 2005 HB 2247 (the Omnibus bill) also was distributed (Attachment 7).

Topic 3 – Motor Vehicle Taxes

Chris Courtwright provided background on the history of motor vehicle sales tax collections by both dealers and private individuals relative to isolated sales of used cars (Attachment 8).

After a review of the activities from the September and October meetings, there was discussion related to the fact that the statutory depreciation rate of 15 percent was inadequate to reflect the true depreciation for many kinds of vehicles and subsequently left motor vehicle tax valuations at significantly higher levels relative to the fair market value of the vehicles.

Chris Courtwright reviewed various policy options offered at previous meetings and discussion followed.

The Committee made a finding that the equity of the current vehicle valuation system remains of serious concern.

The Committee subsequently recommended that the standing tax committees, during the 2006 Session, continue to work with the Department of Revenue on developing potential amendments and alternatives, including changing the current depreciation rate or replacing the entire system with a statewide fee proposal.

The Committee further acknowledged that any major change to the motor vehicle taxation system may have to be phased in over a number years, as was the case in the 1990s.

Topic 4 – Excise or Licensure Tax - Sexually Oriented Businesses

Martha Dorsey presented a summary of the background on the proposed excise or licensure tax on transactions conducted by certain defined sexually explicit businesses. She gave an analysis of comparable legislation in Utah, Oklahoma, and Missouri. Possible legal challenges were summarized briefly, followed by the Committee's previous activities in the September and October meetings (Attachment 9).

The Committee found that a linkage between sexually explicit businesses' products and services and negative effects caused by sex offenders had been established by conferees during the public meetings. Consequently, the Committee felt there exists a compelling state interest to intervene by providing resources to combat the negative effects.

Vice Chairman Wilk moved that legislation be introduced in the House, during the 2006 Legislative Session, that would establish a 10 percent tax on sexually oriented businesses or products, or both. Distribution of the tax should be designated to a specific need or program related to issues of pornography. Representative Beamer seconded the motion. Motion passed.

Language for the bill would be drafted, using concepts from the Utah and Oklahoma bills. It was suggested that the Committee report reflect that the bill be referred to three standing committees: Judiciary, Appropriations, and Taxation.

Topic 6 – Tax Lien Certificates

Martha Dorsey reviewed the background, definition, current law, and other states' use of tax liens sales or certificates and previous Committee activities relating to tax liens (Attachment 10).

At this time, the Committee does not recommend introduction of legislation establishing a tax lien certificate program. However, the Committee recommends the standing committees study and consider revision of current interest rates on delinquent property taxes.

Topic 5 – Analysis of State and Local Tax Policy

Chris Courtwright briefed the Committee on the Legislative Coordinating Council's charge to review the current state and local tax structure, focusing on the shifts in reliance on sales, property, and income taxes since 1990. September and October activities were reviewed, including observations and recommendations of Secretary Wagnon regarding the erosion of the tax base and an overview of Dr. Wong's presentation on the decline of elasticity of the major tax sources (Attachment 11).

After discussion of suggested policy options, there was consensus to submit the following recommendations as part of the Committee report.

State and Local Tax Policy Linkage. The Committee recommended that the context within which the Legislature views state tax policy and potential changes should always include consideration of the implications on local tax policy, especially property taxes.

The Committee strongly encourages the 2006 Legislature to provide property tax relief by authorizing the restoration of sales tax demand transfers to local units of government. Should the demand transfer program need to be restructured, the Committee recommended that special emphasis be placed on providing additional funds for local units in rural areas.

The Committee also asked that the standing tax committees monitor the implications of the growing regional differences in local sales tax rates.

Long-Run Growth and the SGF. The Committee made a finding that the overall elasticity of tax receipts, especially SGF tax receipts, appeared to be declining to the point that the ability of the state to fund ongoing and necessary expenditures without periodic tax increases had been imperilled. The Committee expressed its concern about the recent trend of legislation to earmark future sales, income, and property tax revenue streams from specific industries or businesses, including legislation associated with the development of sales tax and revenue bonds and the neighborhood revitalization program.

The Committee therefore recommended that a more rigorous fiscal review be applied to future legislation seeking to earmark revenues historically placed in the SGF and asked that all such bills be referred to the standing tax committees.

Because of the proliferation of legislation associated with the diversion of revenues, the Committee asked that the standing tax and appropriations committees work with staff at the Division of Budget and the Legislative Research Department to develop a new monthly receipts report that disaggregated taxes and other receipts relative to the amount placed in the SGF compared to the amount placed in all other funds.

Also, because of the concern over long-run state revenue growth issues, the Committee further recommended that the 2006 Legislature memorialize Congress to minimize all federal preemption of state taxing authority.

Business Tax Recommendations. The Committee expressed its concern about the volatility of corporation income tax receipts over the last decade. The Committee then recommended that the Department of Revenue report to the standing tax committees on policy options regarding modernization and structural changes to the tax which would help assure that it continues to be a viable revenue source well into the future.

The Committee recommended that the Legislature attempt to provide a property tax exemption for commercial and industrial machinery and equipment and noted that options under consideration would include a full statutory exemption; expansion of the existing income tax credit to 100 percent; or a constitutional amendment authorizing the Legislature to phase in a full exemption over a period of years.

Forthcoming Studies and the Future. The Committee recommended that the Legislative Budget Committee receive copies in June of the study on the implications of the rapid expansion of state and local debt. The Committee further recommended that additional studies being conducted by the Department of Revenue, including those on sales and property tax base erosion, be made available to all appropriate committees when completed in June 2006. Finally, the Committee anticipated the importance of the need to give these reports in-depth review and therefore, requested that the Legislative Coordinating Council again approve a Special Committee on Assessment and Taxation to study the same state and local tax policy topic during the summer and fall of 2006.

Senator Donovan moved that the minutes of the October 17-18, 2005, meeting be approved, and Representative Thull seconded. Motion passed.

Draft Committee reports on all topics will be sent to members. The Vice Chairman strongly urged the members to review the recommendations and contact staff with concerns or possible changes. He thanked the Committee for its hard work. The meeting was adjourned at 4:05 p.m.

Prepared by Rose Marie Glatt
Edited by Chris Courtwright

Approved by Committee on:

January 3, 2006
(date)