

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairman Edmonds at 9:00 a.m. on March 14, 2002 in Room 519-S of the Capitol.

All members were present except: Representative Wilson, excused

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Don Hayward, Revisor  
Winnie Crapson, Secretary

Conferrees appearing before the Committee: Steve Richards, Secretary of Revenue  
Shirley Sicilian, Department of Revenue

Others Attending: See attached list

By unanimous consent bill will be introduced at the request of the Chairman to place a limitation on property tax by political subdivisions. [HB 3025 - Political subdivision property tax limitation]

Representative Larkin moved, Representative Gatewood seconded, to approve Minutes for January 16, January 23, February 5 and February 6. Motion was adopted.

The Chairman welcomed Shirley Sicilian, General Counsel, of the Department of Revenue to brief the Committee on the Panhandle Eastern Pipeline litigation (*In the matter of the Appeal of Panhandle Eastern Pipeline Company and National Helium Corporation, et al*, 39 P.3rd 21). Ms. Sicilian presented a report covering Substantive Issues, Policy Implications, Fiscal Implications, and Procedural History of the case. (Attachment #1). When asked if it was typical for the Kansas Supreme Court to pull such cases from the Court of Appeals, she responded that it was provided in the statute and that the Supreme Court does occasionally exercise this option on appeals of major cases involving significant policy issues.

Ms. Sicilian was asked who was responsible for the decision or strategy in connection with continuing with the litigation. She said she could speak only with respect to decisions since she came to the Department as General Counsel. As General Counsel she provides input and makes recommendations. She said while there was no formal rule, in the recent history of the Department, the Secretaries had not been attorneys. Decisions about proceeding with litigation are made by the Secretary on advice of the General Counsel. She said in this instance the only issue was whether the decision should be appealed, a settlement should be attempted, or the money paid. There were attempts at settlement which did not work out and the only alternative was to continue to litigate.

In response to questions from committee members Secretary Richards said he understands some of the frustrations. He said he did not have knowledge of settlement negotiations that may have occurred in the late 1980s and early 1990s. He said that as a member of BOTA when it made the decision on Panhandle Eastern he had voted with the majority. When he became Secretary the case was already on appeal and the discussion was whether to proceed with this case. Among matters considered in evaluating whether or not to proceed with the case were the merits of the case and the size of the case, and the importance of a decision by the Court on a matter that was significant from both policy and fiscal standpoints. The Secretary agreed one of the issues was the necessity of having clarity as to the rule of law in the case and its implications for future cases that would come before the Department.

When asked if as Secretary, given his participation in the BOTA decision, he had considered recusing himself when considering continuing the litigation, he said he tried to set aside his personal opinion in this particular case because he believes there were significant policy issues on which there needed to be judicial ruling to give clarity.

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Responding to a question about the decision to pay the \$25 million in two payments resulting in interest of approximately \$300,000 Ms. Sicilian said contributing to the decision were recommendations of budget committees because it would reduce the impact.

Secretary Richards was asked the effect of this change in policy on corporate tax receipts and responded that the Department was going through a process of making decisions on appropriate criteria through internal discussions and consultation with interested parties, basically corporate taxpayers. There is ongoing auditing of corporate income taxes and has been for some time. The purpose of bringing these parties together is to develop a test so there is clear guidance.

The Chairman thanked Secretary Richards and Ms. Sicilian for meeting with the committee.

**Hearing was opened continuing hearings from February 13 and March 7 on  
HB 2706 - Taxpayer Fairness Act of 2002**

Secretary Richards referred to questions presented to him by Committee members when he appeared on March 7 concerning the automated phone system of the Department. He distributed a chart showing Phone Call History for Fiscal Years 1998, 1999, 2000, 2001 and 2002 (Attachment #2). The chart identified calls received and indicated the increase in percentage of those calls answered since the automated phone system was put in place in March 2000.

With reference to questions on March 7 he presented a chart of taxes in collection (Attachment #3). He was asked about results from extra positions authorized for collections and said they were added in July and trained toward the end of the last calendar year and started in earnest the beginning of this year. They are on track to achieve the \$48 million collections and monitor the goals and collection activity almost daily. When asked whether these were instances where they just did not pay, he said there were a variety of things. In some instances returns were filed and the payment was not included.

Secretary Richards said he believes some of the frustration expressed by taxpayers is in response to receipt of letters concerning adjustments when they have not had such letters for several years.

The Committee asked Secretary Richards to explain the reference to employing "acceptable statistical sampling." He explained that individual accounts with a balance in excess of \$1,000 are individually reviewed before a billing goes out. The account is researched to ensure all of payments or adjustments that apply to that account are valid. Accounts under this \$1,000 threshold are put in batches and a statistical sample is done to check validity. As a statistical random sample ten percent of each batch is selected and if the error rate of selection is in excess of fifteen percent, the indication is that there is something wrong and no billing is done until each return in the batch is checked. The batches are divided into those under \$50; from \$50 to \$100, from \$100 to \$250, etc. up to \$1,000. The same methodology is applied to business accounts stratifying them down from \$5,000.

Secretary Richards responded to questions about received dates assigned on receipt of returns and payments. He explained that dates are manually changed every day in the equipment that encodes the checks as well as the receipt of the voucher so it records the current date that check is processed.

He said when an individual taxpayer or preparer requests a closure letter it is generated within our system and typically mailed within one or two days.

A Committee member asked about the virtual taxpayer assistance system the Secretary had suggested during the hearing on March 7, Secretary Richards said funding has not been requested from the Appropriations Committee for that project and it was hoped it could be accomplished as funding becomes available. He said Virtual Taxpayer Assistance was not part of the original project design as had been assumed by some members of the Committee.

The Chairman asked Secretary Richards to comment specifically on the objections to **HB 2706** he had outlined in his testimony on March 7. Secretary Richards responded that with respect to his concern that it would micromanage, it would dictate how the Department communicated with the taxpayer, when they have hearings. He expressed concern that the CPA community has not approached the Department to discuss their concerns and how they can be collectively solved. He believes the language in Section 1

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would lead one to believe you can file a report at any point in time and it is up to the Director to accept or reject. There are no parameters defining when the Director can reject a return and to Secretary Richards's knowledge they have never rejected a return a taxpayer chose to file with them.

Referring to his belief that it provides a redundant hearing process, he said it is important for the taxpayer and for the Department to have a final determination so they may take the appeal to the next level.

He noted the bill referred to "detailed, clear and accurate explanation of tax penalty and interest" and said he believes that is provided today with a line-by-line explanation of how the tax return was filed and what changes they have made to it.

The Secretary was asked about the Fiscal Note indicating 36 additional people would be needed at a cost of \$1.5 million. He said that was the requirement to raise the threshold so that every individual account below \$500 can be examined. They do not have the volume of staff to comply with that and would need 36 additional individuals and that there are some other incidental operating costs.

He was asked how the estimate of \$5.1 million was arrived at for in-house programming and said he could go over the details with the staff that does that analysis. There are standards they apply when they have to make programming changes with in-house resources or with outside resources. The Chairman requested that staff provide that information.

Secretary Richards expressed concern about the implementation date if the bill is to be effective upon date of publication.

Chairman Edmonds provided the Secretary with a letter (Attachment #4) which he regarded as difficult to understand and that although there was an adjustment schedule he was not convinced there was clear communication.

Hearing was closed on HB 2706.

**Consideration was opened on HB 2804 - School district finance; teacher benefit and classroom enhancement budget.**

**Representative Cook moved proposed amendment, Representative Hutchins seconded, (Attachment #5).**

**Representative Powers moved, Representative Kirk seconded, to table bill. Motion failed..**

**Motion by Representative Cook failed.**

**Representative T Powell moved, Representative Pyle seconded, proposed language in the amendment offered by Representative Cook relating to use of school district funds for promotion. Motion was adopted.**

**Representative Powers moved that HB 2804 be reported adversely. Motion was not seconded.**

**Representative Huff moved, seconded by Representative Vickrey, to report HB 2804 favorable for passage as amended. Motion was adopted. Representative Kirk and Representative Powers recorded as voting no.**

Meeting adjourned at 11:02 a.m. Next meeting is March 15 in the lobby of the Docking Building for an informational tour of the Department of Revenue.