

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:45 a.m. on February 18, 2004, 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 Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Senator Karin Brownlee
Charles Gregor, Jr., Leavenworth-Lansing Area Chamber of Commerce
Marlee Carpenter, Kansas Chamber of Commerce
Hal Hudson, National Federation of Independent Business
Kenneth Daniel, Midway Wholesale
Bob Corkins, Freestate Center for Liberty Studies
Merv Gleason, Strategic Financial Management, City of Olathe
Dave Gregory, Star Lumber & Supply Co., Inc.
Rebecca Shipley, Olathe Glass Company, Inc.

Others attending:

See Attached List.

Senator Corbin called the Committee's attention to the minute of the February 16 meeting.

Senator Donovan moved to approve the minutes of the February 16, 2004, meeting, seconded by Senator Buhler. The motion carried.

SB 444—Delay of destination sourcing for sales tax purposes until action of Congress

Senator Corbin commented that an amendment to **SB 325** similar to the provisions in **SB 444** was offered on the floor of the Senate on February 12, and it was defeated on a vote of 26-13.

Senator Karin Brownlee testified in support of **SB 444**. She noted that the mission statement of the Streamlined Sales Tax Project (SSTP) indicates that the goal is to develop and implement a sales and use tax system that radically simplifies sales and use taxes. After receiving phone calls and meeting with frustrated business owners, she believes that the state's formerly usable sales tax system has not been radically simplified but instead has been replaced with a system that defies logic and steals away hours of productivity from those who can least afford to give it. She contended that Kansas' participation in the project means that the state is giving up a great deal of autonomy. She noted that allowing business an administrative fee may be helpful, but it still leaves them with the burden of compliance with the SSTP legislation. In her opinion, the benefits of the SSTP have been tremendously oversold. (Attachment 1)

Charles Gregor, Jr., Leavenworth-Lansing Area Chamber of Commerce, testified in support of **SB 444** because he believes that it takes a common sense approach to the issue of sales tax destination sourcing and provides an opportunity for Kansas businesses to be well prepared to make the transition to nationwide destination sourcing if and when enabling federal legislation becomes law. By that time, the Department of Revenue will be aware of the precise requirements needed and will be able to implement a well thought out destination sourcing law. He noted that the status of Kansas as an SSTP qualified state will not be lost if destination sourcing is delayed, and the state can remain on the list of those favoring the SSTP. He noted further that there is a distinct possibility that some of the state's taxing jurisdictions will experience minor to severe losses of sales tax revenue with the full implementation of destination sourcing. The bill would allow time to research what the impact would be and what remedies might be needed. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 18, 2004, in Room 519-S of the Capitol.

Marlee Carpenter, Kansas Chamber of Commerce, testified in support of **SB 444**. She noted that the Chamber supports a level playing field between Internet retailers and brick and mortar retailers, and it supported the passage of the SSTP last year. However, retailers are very concerned that destination sourcing is not working in Kansas with its more than 750 sales tax jurisdictions. Ms. Carpenter urged the Committee to consider delaying implementation of the destination sourcing requirements until six months after Congress implements the SSTP at the national level. She noted that delaying implementation would give legislators time to work with the national project to find solutions to the destination sourcing problem. In addition, a delay would allow the national project to finalize all details and listen to concerns about specific parts of the project, and it would allow retailers time to figure out the new system. ([Attachment 3](#))

In response to committee questions, Ms. Carpenter commented further that retailers with which she has visited indicated that they are willing to comply with destination sourcing rules, but they do not see a monetary gain until Congress acts and all companies nationwide must comply. As to the recent agreement by Amazon.com to begin remitting sales taxes to the state, she pointed out that Amazon.com should have been already remitting sales taxes to the state because it has nexus in Kansas.

Hal Hudson, National Federation of Independent Business (NFIB), testified in support of **SB 444**. He informed the Committee that a survey of NFIB members showed that a majority believes it is appropriate to delay or repeal the destination sourcing rule until Congress acts to allow Kansas to collect sales tax from remote sellers. Even those members who support the concepts of SSTP question the implementation of destination sourcing at this time. Mr. Hudson noted that many NFIB members have 15 or fewer employees, and many of them had no need for a computer prior to the enactment of destination sourcing. Those who do have computers complain about expensive upgrades needed to comply with the law. ([Attachment 4](#))

Kenneth Daniel, Midway Wholesale, testified in support of **SB 444**. He noted that his business has been in full compliance with the destination sourcing law since September 2003. It cost his company \$50,000 to convert and comply in 2003, and it will cost approximately \$20,000 to comply in 2004. He estimates that it will cost \$10,000 to \$20,000 per year in future years. He discussed data, using four different scenarios of destination sourcing, as shown on spreadsheets which analyze the revenue effects of destination sourcing and remote tax collections for the state, local governments, and Kansas retailers. He also discussed the documentation of the figures he used in preparing the spreadsheets. ([Attachment 5](#))

Bob Corkins, Freestate Center for Liberty Studies, testified in support of **SB 444**. He contended that the SSTP advocates are exercising a deplorable strategy to circumvent the U.S. Constitution. In his opinion, the national strategy is to sidestep the Commerce Clause barrier to Internet sales tax by getting enough states to make their sales tax laws more uniform. He emphasized his concern that the SSTP downplays the importance of state sovereignty and discourages states from competing to have the lowest tax burden. In Mr. Corkins' opinion, the Governor and the Secretary of Revenue, who are SSTP advocates, showed little respect for their constitutional duty to enforce state law when they chose not to begin enforcing the destination sourcing legislation immediately after its passage. The net result is millions in overcharged sales tax dollars since last July. Mr. Corkins argued that it is possible that Kansas will have implemented a new sales tax rule that does nothing but impose onerous costs on merchants and reduce local tax revenue. In conclusion, he suggested that the destination sourcing rule should be suspended for all retailers alike by deleting Section 11 from the bill. ([Attachment 6](#))

Merv Gleason, Interim Director for the Strategic Financial Management Department for the City of Olathe, testified in support of **SB 444**. He noted that the City of Olathe is the fastest growing city in the state, and given the current economic times, citizen demands for road improvements and services are stretching the city's budget. The sales tax level has remained at 2002 levels, and passage of the SSTP legislation in 2003 has not proven to be beneficial for the City of Olathe. Customers still come to Olathe to purchase goods and send them home; however, the sales tax that formerly came to Olathe now goes home with the customer. To compound that problem, the movement of revenue is often one way due to the city's geographical location. Mr. Gleason requested that implementation of destination sourcing be delayed until such time Congress has enacted the appropriate legislation. ([Attachment 7](#))

Dave Gregory, Star Lumber and Supply Company, testified in support of **SB 444**. He noted that he works very closely with retail sales tax collection and that over 80 % of Star's sales are derived from deliveries. For

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on February 18, 2004, in Room 519-S of the Capitol.

retailers like Star, the SST is a logistics nightmare. In his opinion, the SSTP may cost Kansas based retailers more in implementation expenditures and lost productivity than the amount of lost use taxes the state can collect. He contended that the state's "Sales and Use Tax Address Tax Rate Locator" Internet based lookup routine is impractical. In addition, he called attention to a list of other problems with the SSTP included in his written testimony. To allow businesses additional time to finalize software changes and train employees, he suggested that **SB 444** be amended by providing for a further one year extension after Congress enables the states to tax intrastate commerce. (Attachment 8)

Rebecca Shipley, Olathe Glass Company, testified in support of **SB 444**. She complained that the SST code is asking too much of small service businesses and businesses such as hers which conduct zero Internet sales. She noted that, for her business, compliance with the SST code would decrease the collected share of the tax revenue, and implementation of the new tax code would be a large financial burden. She emphasized that her company cannot afford to spend thousands on a system from which it will receive no benefit. She argued her company should not be forced to comply with a complicated tax code which will negatively affect its welfare nor should it be doing the job of the state, dividing up the taxes among different districts. (Attachment 9)

There being no further time, Senator Corbin announced that the written testimony of others scheduled to testify on **SB 444** would be made part of the record. The remaining testimony in support of **SB 444** included the following:

Karl Peterjohn, Kansas Taxpayers Network (Attachment 10),
Art Brown, Mid-America Lumbermens Association (Attachment 11),
Kenneth Hite, Christian Book & Gift Stores (Attachment 12), and
Natalie Bright, Wichita Independent Business Association (Attachment 13).

Larry Baer, League of Kansas Municipalities, was scheduled to testify in opposition to **SB 444** for the reason that the League remains firmly committed to the SSTP as adopted and placed in effect last year as a means to level the playing field and to allow for revenues to be derived from Internet sales. (Attachment 14)

The hearing on **SB 470**, concerning remittance credits for sales and use tax collection services provided by retailers, was not rescheduled. Senator Corbin noted that the provisions of the bill were incorporated into **SB 532**, which he requested for introduction in the Senate Ways and Means Committee on February 17.

The meeting was adjourned at 12:00 p.m.

The next meeting is scheduled for February 19, 2004.