

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2136**

As Agreed to April 28, 2022

Brief*

HB 2136 would amend law related to sales tax remittances, authorize Atchison County to submit a question to voters regarding a local sales tax, delay the implementation of a sales tax exclusion for delivery charges, and enact the COVID-19 Retail Storefront Property Tax Relief Act.

Sales Tax Remittances

The bill would eliminate a provision requiring retailers with annual sales tax liability in excess of \$40,000 to remit estimated payment for the first 15 days of the current month when the tax return for the previous month is filed.

Atchison County Sales Tax Authority

The bill would authorize Atchison County to submit a question to the voters to impose a sales tax of up to 1.0 percent for the purposes of funding joint law enforcement communications and solid waste disposal. The tax would not be subject to apportionment with cities within the county and would be required to expire in not more than 10 years.

Sales Tax Delivery Charges Exclusion Implementation Delay

The bill would delay the implementation date of a sales tax exclusion for separately stated delivery charges to July 1, 2023. The exclusion is currently scheduled to be implemented July 1, 2022.

COVID-19 Retail Storefront Property Tax Relief Act

The bill would enact the COVID-19 Retail Storefront Property Tax Relief Act (Act) to provide for claims for refunds to be paid for tax years 2020 and 2021 for certain claimants that were operationally shut down or restricted at their retail storefront by a COVID-19-related order or action imposed by the State, a local unit of government, or a local health officer.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/klrld>

Refund Amounts

The refund would be equal to 33.0 percent of the sum of the COVID-19 ordered shutdown days gross rebate amount and the COVID-19 ordered restricted operations days gross rebate amount, as those terms are defined by the bill. Refunds would be limited to \$5,000 per tax year per retail storefront.

The COVID-19 ordered shutdown days gross rebate amount would be the amount of property taxes accrued or 15.0 percent of gross rent actually paid in cash for the tax year, divided by 3 for businesses shut down for 91 or more days, divided by 4 for businesses shut down for 61 to 90 days, divided by 6 for businesses shut down for 31 to 60 days, and divided by 12 for businesses shut down for 1 to 30 days.

The COVID-19 ordered restricted operations days gross rebate amount would be the amount of property taxes accrued or 15.0 percent of gross rent actually paid in cash for the tax year, divided by an amount ranging from 2 to 16, depending on the number of ordered restricted operation days.

Eligible Claimants

Claimants would be required to be for-profit businesses in operation as of July 1, 2019, and March 1, 2020, and filing a 2019 tax return with annual revenues of at least \$10,000 in 2019, with less gross revenue in 2020 or 2021 than in 2019. Businesses would not be permitted to be claimants if they received more than a total of \$150,000 in prior COVID-19-related local, state, or federal funding, or any combination thereof.

The bill would exclude as claimants grocery stores, pharmacies, hardware stores or home improvement businesses, retail liquor stores, manufacturers and food processors, schools from pre-kindergarten through postsecondary, hospitals and health care providers (not including dentists), property management and real estate services, professional services, agricultural and aquaculture producers, hosts or operators of vacation or short-term rental units, passive businesses, financial businesses primarily engaged in the business of lending, cable companies, telephone companies, utilities, and energy production, generation, and distribution companies.

Only one claimant per retail storefront would be permitted to receive a refund per tax year. "Retail storefront" would be defined to be real property where the claimant conducts retail sales through customers' physical, on-site presence and could consist as part of a multi-purpose or multi-retail storefront building.

Additional Provisions

The Act would require claims to be filed with the Department of Revenue on or before April 15, 2023, in order to be paid or allowed. The Act would direct the Director of Taxation to make available suitable forms for filing claims and would authorize the Secretary of Revenue to adopt rules and regulations necessary for the administration of the Act.

The Act would require claimants to provide reasonable proof of eligibility for a refund to the Director of Taxation, including information concerning taxes levied and rent paid. The Act would

permit the amount of any claim to be applied to outstanding tax liability owed by the claimant and would require a refund amount to be paid to a county treasurer to be applied to property taxes owed in the event a claimant has delinquent property taxes for tax year 2020 or 2021. Delinquent property taxes for any tax year prior to 2020 would disallow a claimant from being eligible for a refund.

The Act would provide for the disallowance of any claims filed with fraudulent intent or upon a finding that the claimant received title to the retail storefront for the purpose of applying for a refund. Filing a claim with fraudulent intent would be a class B misdemeanor, and any claim paid upon a fraudulent filing would bear interest at a rate of 1.0 percent per month until the claim was repaid or recovered.

The Act would provide for refunds to be paid out of the American Rescue Plan-State Fiscal Relief-Federal Fund.

The provisions of the Act would be subject to informal conference and appeals to the State Board of Tax Appeals.

Conference Committee Action

The second Conference Committee agreed to remove the contents of HB 2136, pertaining to insurance matters, and insert the provisions from Senate Sub. for HB 2313 regarding the COVID-19 Retail Storefront Property Tax Relief Act; the provisions from Senate Sub. for HB 2316 regarding sales tax remittances; the provision delaying implementation of the sales tax exclusion for separately stated delivery charges; and the provision regarding Atchison County sales tax authority.

The second Conference Committee also agreed to amend provisions concerning the COVID-19 Retail Storefront Property Tax Relief Act to provide for refunds to be paid out of the American Rescue Plan-State Fiscal Relief-Federal Fund and to limit refunds to \$5,000 per tax year per retail storefront.

[*Note:* The provisions of HB 2136, as amended by Senate Committee, were enacted as part of an insurance conference committee report for House Sub. for SB 78 (2021 law).]

Background

Senate Sub. for HB 2313 (COVID-19 Retail Storefront Property Tax Relief Act)

On May 3, 2021, the Senate Committee on Assessment and Taxation recommended a substitute bill containing the Act and various other tax provisions. The provisions contained in the Act were based on SB 149.

SB 149

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of Representative Corbet.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the Kansas Chamber of Commerce and the Kansas Restaurant and Hospitality Association. The proponents stated the bill would reimburse business owners for property taxes attributable to times when the businesses were shut down due to governmental orders. Written-only proponent testimony was provided by Representative Corbet and a private citizen.

Opponent testimony was provided by a representative of the Kansas Association of Counties. The opponent stated the bill would place an undue burden on county budgets. Written-only opponent testimony was provided by a representative of the Kansas Legislative Policy Group.

Written-only neutral testimony was provided by a representative of the League of Kansas Municipalities.

Senate Sub. for HB 2316 (Sales Tax Changes)

Senate Sub. for HB 2316 contained numerous provisions. The only provisions inserted in this Conference Committee Report are those related to sales tax remittances for which no further background information is available.

Fiscal Information

According to the Department of Revenue, the provision of the bill eliminating estimated sales tax payments would reduce FY 2023 state receipts by \$191.3 million, of which \$160.4 million would be State General Fund (SGF) receipts and \$30.9 million would be State Highway Fund receipts. The provision would have no fiscal effect in future years.

According to the Department of Revenue, the delay of the implementation of the sales tax exclusion for delivery charges would increase FY 2023 state receipts by \$4.8 million, of which \$4.0 million would be SGF receipts and \$800,000 would be State Highway Fund receipts.

The COVID-19 Retail Storefront Property Tax Relief Act would result in expenditures from federal funds. Previous versions of the program were anticipated to result in expenditures totaling \$56.0 million. \$50.0 million was appropriated for this purpose in FY 2023.

The provisions providing for Atchison County sales tax authority would have no state fiscal effect.

Taxation; sales tax; Atchison County; estimated payments; COVID-19 Retail Storefront Property Tax Relief Act

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