

SESSION OF 2021

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2313**

As Agreed to May 7, 2021

Brief*

Senate Sub. for HB 2313 would enact the COVID-19 Retail Storefront Property Tax Relief Act, provide for property tax reimbursements in the event of shutdowns or capacity limitations due to disaster emergency declarations, extend the 20-mill statewide school finance levy, expand the motor vehicle property tax exemption for National Guard members, modify *pro tempore* membership provisions for the State Board of Tax Appeals (BOTA), require the Legislative Division of Post Audit to study the impact of governmental and nonprofit organizations competing with for-profit businesses, enact the Golden Years Homestead Property Tax Freeze Act, sunset the Selective Assistance for Effective Senior Relief tax credit, and enact a property tax exemption for health clubs.

COVID-19 Retail Storefront Property Tax Relief Act

The bill would enact the 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/kldr>

Refund Amounts

The refund would be equal to 33 percent of 1/365 of the amount of taxes levied for every day the business is shut down and 1/365 the amount of taxes levied multiplied by the percentage capacity limitation for every day the business is required to operate at a limited capacity. A day would be considered either a day shut down or a day restricted.

“Restricted” would be defined to mean any occupancy limitation, limitation on periods of operation, or the exertion by any governmental entity of other significant control on business resources or functionality related to the COVID-19 pandemic.

Eligible Claimants

The bill would require claimants 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 between \$10,000 and \$2,500,000 in 2019, with less gross revenue, including any COVID-19-related local, state, or federal funding, 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.

Eligible claimants would not include grocery stores, pharmacies, hardware stores or home improvement businesses, retail liquor stores, manufacturers and food processors, schools from pre-kindergarten through post-secondary, hospitals, physicians, surgeons, psychologists, psychoanalysts, 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 may consist of 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 June 15, 2022, in order to be paid or allowed. The Director of Taxation would be permitted to extend the time for filing by up to two years when good cause exists. 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 percent per month until the amount of the claim was repaid or recovered.

The provisions of the Act would be subject to informal conference and appeals to the BOT.

Each city or county would be required to pay the State an amount equal to 33 percent of the amount of refund claims paid pursuant to the Act for property located in such city or county if the city or county issued a COVID-19-related order that is the basis for the claim.

The bill would specify that any refund amounts are exempted from Kansas income tax.

Disaster Emergency Declarations Property Tax Reimbursements

Beginning January 1, 2022, the bill would provide for reimbursements from the county general fund to the owner of any building maintaining a business on the property that was shut down or limited in any capacity pursuant to a declared disaster emergency. The reimbursement would be $\frac{1}{365}$ of the amount of taxes levied for every day the business is shut down and $\frac{1}{365}$ the amount of taxes levied multiplied by the percentage capacity limitation for every day the business is required to operate at a limited capacity.

If the State or any political subdivision of the State, other than the county, issued the order shutting down or limiting the capacity of the business, such governmental entity would be required to reimburse the county for the cost of the reimbursement.

If the business on the property is not operated by the owner of the property, the property owner and the business operator would each be entitled to 50 percent of the reimbursement. The business operator would be permitted to assign the operator's share to the property owner as credit against any delinquent rent owed to the property owner.

Statewide School Finance Tax Levy

The bill would re-authorize the 20-mill property tax levy for school years 2021-2022 and 2022-2023.

The bill would continue the exemption of residential property up to \$20,000 of its appraised valuation from the 20-mill property tax levy for taxable years 2021 and 2022.

National Guard Motor Vehicle Property Tax Exemption

The bill would extend a vehicle property tax exemption for up to two motor vehicles to all current members in good standing of the Kansas Army National Guard, Kansas Air National Guard, or U.S. military reserve forces stationed in Kansas, beginning in tax year 2022. Under current law, members of the Kansas Army National Guard, Kansas Air National Guard, or Kansas reserve forces of the U.S. military receive the exemption only when stationed or assigned in Kansas under authority of Title 10 or 32 of the U.S. Code.

Board of Tax Appeals Pro Tempore Membership

The bill would provide that a *pro tempore* member of BOTA may be appointed when there is any vacancy on the Board. Current law requires two vacancies prior to the appointment of a *pro tempore* member.

Legislative Division of Post Audit Study

The bill would require the Legislative Post Audit Committee to direct the Legislative Division of Post Audit to conduct a study of the impact of nonprofit organizations and governmental entities competing against for-profit businesses during calendar year 2021 and submit a final study report to the Legislature on or before January 15, 2022.

Golden Years Homestead Property Tax Freeze Act

The bill would establish a new property tax circuit breaker refund program beginning in tax year 2021 that would provide refunds of a portion of property taxes paid on qualifying residential homestead property equivalent to the total property tax increase over the base year. For taxpayers qualifying at the time of enactment, tax year 2020 liability would be deemed as the base year. For all other taxpayers, the base year would be the first year in which they are eligible to claim the refund provided by the refund program. The refund would be the amount of property tax in excess of the base year amount. The maximum amount of any refund under the program would be \$5,000.

To qualify for the refund program, the bill would require a taxpayer to have a household income of less than \$50,000 and be 65 years of age or older or a disabled veteran. The household income threshold would be annually adjusted according to the federal cost-of-living adjustment provided for in Section 1(f)(3) of the Internal Revenue Code.

The bill would require the value of the qualifying residential homestead property to be less than \$395,000. Qualifying taxpayers would be ineligible to claim a refund if they are seeking to claim the existing Homestead Property Tax Refund. The bill would allow surviving spouses of qualified individuals to continue in the refund program unless they subsequently remarry. The bill would require refund program claims to be filed by April 15 for refund amounts determined by the previous property tax year's liability.

Under the bill, "disabled veterans" would include Kansas residents honorably discharged from active service in any branch of the armed forces of the United States or the Kansas National Guard who have been determined to have a 50 percent permanent disability sustained while on active duty.

Beginning with the second year of the program, the Director of Taxation would be required to send county clerks electronic records by October 1 of each year containing names of eligible claimants who have received refunds under the refund program for the prior year.

The bill would authorize the Director of Taxation to apply refunds to any state tax liability of the qualified individual or other member of the household. Remaining refunds would first be applied to any delinquent property taxes on the homestead and then to any current property tax liability.

The bill would grant the Secretary of Revenue authority to adopt rules and regulations necessary for administration of the refund program.

The Golden Years Homestead Property Tax Freeze Act would sunset at the end of tax year 2025.

Selective Assistance for Effective Senior Relief Sunset

The bill would sunset the Selective Assistance for Effective Senior Relief tax credit at the end of tax year 2020.

Health Club Property Tax Exemption

The bill would create, beginning in tax year 2022, a property tax exemption for all real property actually and regularly used as an owner-operated health club.

“Health club” would be defined to mean any business whose primary purpose is to offer facilities containing certain equipment for the preservation, maintenance, encouragement, or development of physical fitness in exchange for the payment of a fee that entitles the payer to use such facilities. Health clubs would exclude facilities that are primarily weight-control facilities; health spas; dance studios; martial arts or self-defense studios; tennis, racquet,

or basketball facilities; swimming pools; golf clubs; or enterprises providing similar activities that do not have the preservation, maintenance, encouragement, or development of physical fitness as their primary purpose.

Conference Committee Action

The Conference Committee agreed to the Senate amendments to the bill and also agreed to add a five-year sunset to the Golden Years Homestead Property Tax Freeze Program, insert the health club property tax exemption, and make the following changes to the COVID-19 Retail Storefront Property Tax Relief Act:

- Modifying the refund formula;
- Exempting the refunds from Kansas income tax;
- Clarifying the list of businesses excluded from receiving refunds;
- Providing that cities (in addition to counties) could be required to reimburse the State for portions of refunds and providing that cities and counties are responsible for reimbursement only if they issued an order shutting down or limiting the business;
- Changing the due date for claims from April 15 to June 15, 2022; and
- Including local, state, and federal aid in the gross revenue determination of a claimant's eligibility.

Background

The bill was introduced by the House Committee on Veterans and Military at the request of the Enlisted Association of the National Guard of Kansas and referred to

the House Committee on Taxation. As introduced, it contained provisions related to the National Guard motor vehicle property tax exemption.

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House Committee on Taxation

In the House Committee hearing, **proponent** testimony was provided by a representative of the Enlisted Association of the National Guard of Kansas, who stated it is unfair to provide active duty military or guard reserve members with an exemption while excluding other Kansas airmen and soldiers, given that all of them help protect Kansas.

No other testimony was provided.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by two representatives of the Enlisted Association of the National Guard of Kansas, who stated the exemption is most appropriately provided to all current National Guard members.

No other testimony was provided.

The Senate Committee amended the bill to include the COVID-19 Retail Storefront Property Tax Relief Act and provisions related to disaster emergency declaration property tax reimbursements (similar to provisions in SB 149), the statewide school finance tax levy (SB 277), BOTA *pro tempore* membership, and an audit by the Legislative Division of Post Audit. [The Conference Committee retained these amendments.]

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to insert the Golden Years Homestead Property Tax Freeze Act and the sunset of the Selective Assistance for Effective Senior Relief tax credit. The Golden Years Homestead Property Tax Freeze Act had been introduced in SB 76.

In the Senate Committee on Assessment and Taxation hearing on SB 76, **proponent** testimony was offered by Senators Holland, Peck, and Pittman; a representative of the Kansas Association of Counties; and a private citizen. Written-only **proponent** testimony was offered by Senator Petersen, a representative of the Kansas Association of Realtors, and two private citizens. Proponents stated the bill would make property tax bills more affordable for senior citizens.

Opponent testimony was offered by a representative of the Kansas Chamber of Commerce, stating the bill would mask the true cost of property taxes and result in property tax shifts.

Written-only neutral testimony was offered by a representative of the Kansas Policy Institute.

SB 149 (Disaster Emergency Declarations Property Tax Reimbursements)

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

Senate Committee on Assessment and Taxation

At the Senate Committee hearing on the bill, **proponent** testimony was provided by representatives of the Kansas Chamber of Commerce and the Kansas Restaurant and

Hospitality Association. Written-only **proponent** testimony was provided by Representative Corbet and a private citizen. Proponents stated the bill would reimburse business owners for property taxes attributable to times when the businesses were shut down due to governmental orders.

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

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

SB 277 (Statewide School Finance Tax Levy)

The bill was introduced by the Senate Committee on Ways and Means at the request of Senator McGinn.

Senate Committee on Assessment and Taxation

At the Senate Committee hearing on the bill, **proponents** included Representative Jennings and representatives of United School Administrators of Kansas, USD 204 Bonner Springs, USD 252 Southern Lyon County, and USD 232 De Soto. Written-only **proponent** testimony was provided by representatives of the Kansas Association of School Boards and the Kansas State Board of Education. Proponents stated the statewide mill levy was necessary to finance schools and also requested certain date changes related to SB 13.

Neutral testimony was provided by a representative of the League of Kansas Municipalities.

HB 2445 (Health Club Property Tax Exemption)

The bill was introduced at the request of the House Committee on Taxation.

House Committee on Taxation

At the House Committee hearing on the bill, **proponents** included representatives of the Kansas Health and Fitness Association and the Kansas Chamber of Commerce. **Proponents providing written-only testimony** included representatives of Club Woodside, Opti-Life Vitality Club and Spa, and the International Health, Racquet and Sportsclub Association. Proponents stated the bill would allow privately owned health clubs to effectively compete with public and nonprofit health facilities.

Opponent testimony was offered by representatives of the Kansas Association of Counties and the League of Kansas Municipalities. Written-only **opponent** testimony was provided by representatives of the cities of Manhattan, Merriam, Mission, Prairie Village, and Westwood Hills. Opponents stated the bill would shrink the property tax base and increase the property tax burden on properties that were not exempt.

Fiscal Information

COVID-19 Retail Storefront Property Tax Relief Act

A revised fiscal estimate for the Conference Committee agreement on the COVID-19 Retail Storefront Property Tax Relief Act was not immediately available.

Disaster Emergency Declarations Property Tax Reimbursements

According to information provided by the Department of Revenue on April 27, 2021, the Department is unable to estimate the impact of future emergency declarations.

Statewide School Finance Mill Levy

According to the fiscal note prepared by the Division of the Budget on SB 277, revenues from the 20-mill statewide property tax are estimated to be \$752.4 million in FY 2022 and \$770.6 million FY 2023. Enactment of the bill is reflected in *The FY 2022 Governor's Budget Report*.

National Guard Motor Vehicle Property Tax Exemption

According to the fiscal note prepared by the Division of the Budget on HB 2313 as introduced, the Department of Revenue indicates enactment of the bill could reduce state revenues by as much as \$27,288 for FY 2022, with \$18,192 from the Educational Building Fund and \$9,096 from the State Institutions Building Fund, and would also decrease revenues to local governments that levy property tax by an amount not calculated by the Department. The bill would require \$720 for Department administrative costs from the State General Fund for FY 2022. Any fiscal effect associated with HB 2313 as introduced is not reflected in *The FY 2022 Governor's Budget Report*.

Golden Years Homestead Property Tax Freeze Act and Selective Assistance for Effective Senior Relief Sunset

According to information provided by the Department of Revenue on March 4, 2021, the Department estimates the enactment of these two provisions will reduce state revenues by \$1.03 million in FY 2022, \$6.92 million in FY 2023, and

\$13.93 million in FY 2024. Any fiscal effect associated with these provisions is not reflected in *The FY 2022 Governor's Budget Report*.

Health Club Property Tax Exemption

According to the fiscal note prepared by the Division of the Budget on HB 2445, the Department of Revenue indicates enactment of the provisions of the bill would reduce state property tax revenues by an indeterminate amount. The Kansas Association of Counties and the League of Kansas Municipalities also indicate the bill would reduce local property tax revenues. Any fiscal effect associated with these provisions is not reflected in *The FY 2022 Governor's Budget Report*.

Taxation; property tax; Board of Tax Appeals; National Guard; motor vehicle property tax; COVID-19; refunds; Legislative Division of Post Audit; health clubs; homestead property tax

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