

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2597**

As Agreed to March 31, 2022

Brief*

Senate Sub. for HB 2597 would amend law related to income and sales taxes and would enact the COVID-19 Retail Storefront Property Tax Relief Act.

The bill would amend law related to the standard deduction, taxation of Social Security benefits and retirement plan income, carried back net operating losses, the deductability of certain federal disallowances related to employment tax credits, and the child day care services credit. The bill would amend law related to sales tax remittances, sales tax on certain utilities, and local sales taxes.

Standard Deduction

The bill would provide, beginning in tax year 2023, for the standard deduction amounts to be annually increased by the cost of living adjustment provided for by Section 1(f)(3) of the Internal Revenue Code.

Social Security Benefits Income Taxation

The bill would expand the income tax exemption for certain Social Security benefits to phase out taxpayer eligibility for the exemption through a linear transition formula from \$75,000 in federal adjusted gross income to \$85,000 in federal adjusted gross income in tax year 2023. Beginning in tax year 2024, the upper bound of the transition would be increased by \$5,000 each year.

Current law ends eligibility at \$75,000 with no phase out.

Retirement Plan Income Taxation

The bill would create, beginning in tax year 2023, a subtraction modification exempting up to \$2,000 (\$4,000 for married filers filing jointly) of retirement plan income. Beginning in tax year

*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/kIRD>

2024 the amount of the exemption would be increased by the cost of living adjustment provided for by Section 1(f)(3) of the Internal Revenue Code.

Carried Back Net Operating Loss Carry Forwards

The bill would create a subtraction modification allowing taxpayers who carried back federal net operating losses in tax years 2018 through 2020 to subtract such amounts from their income for purposes of determining Kansas adjusted gross income. Taxpayers would be permitted to carry forward such net operating losses for up to 20 years if the amount exceeds the Kansas adjusted gross income of the taxpayer.

Employment Credit Disallowance Exemptions

The bill would create income tax exemptions for 25 percent of the federal deduction disallowances associated with the federal Work Opportunity Tax Credit, or similar credits, and the federal Employee Retention Credit.

Child Day Care Services Credit

The bill would allow any income or privilege taxpayer to claim the child day care services credit and would permit taxpayers to claim 50 percent of expenditures paid to an organization providing child care to the taxpayer's employees beginning in tax year 2022. Current law limits the credit to corporation income taxpayers and does not permit the credit for payments made to organizations.

The bill would also raise the amount of the annual credit for employers establishing and operating a facility, either independently or in conjunction with other employers, in Kansas providing child care for the children of their employees from 30.0 percent to 50.0 percent of expenses paid in the establishment and operation of such a facility in all years following the year of establishment of the facility (current law provides for a 50.0 percent credit in the year in which the facility is established).

The bill would also raise the amount of the credit for the amount expended for the purchase of services to provide child care or the service of locating such services from 30.0 percent to 50.0 percent.

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.

Sales Tax on Utilities

The bill would expand, beginning July 1, 2023, the state sales and use tax rate of zero percent currently applied to residential and agricultural sales of gas, electricity, heat, propane

gas, liquified petroleum gas, coal, wood, and other fuel sources for the production of heat or lighting to all such sales. Additionally, such sales would be added to the list of items expressly subject to sales taxes imposed by cities and counties.

Washburn University Sales Tax

The bill would provide that all sales subject to sales taxes imposed by cities and counties would be subject to sales taxes imposed by Washburn University.

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 require to expire in not more than 10 years.

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.

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 may 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 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 Conference Committee agreed to replace the contents of Senate Sub. for HB 2597 with the provisions from Senate Sub. for HB 2313 regarding the COVID-19 Retail Storefront Act; the modified provisions from HB 2237 regarding the child day care services tax credit; the

provisions from Senate Sub. for HB 2239 regarding net operating losses and the disallowed deductions for certain employer tax credits; the provisions from Senate Sub. for HB 2316 regarding sales tax remittances, sales tax on utilities, and Washburn University sales tax; and the provisions described above regarding the standard deduction, taxation of Social Security benefits, taxation of retirement plan income, and Atchison County sales tax authority.

[*Note:* The contents of Senate Sub. for HB 2597 were placed into the Conference Committee Report for Senate Sub. for HB 2239.]

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 COVID-19 Retail Storefront Property Tax Relief Act and various other tax provisions. The provisions contained in the COVID-19 Retail Storefront Property Tax Relief 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

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.

HB 2237 (Child Day Care Services Credit)

The bill was introduced by the House Committee on Financial Institutions and Rural Development at the request of Representative Kelly.

House Committee on Financial Institutions and Rural Development

In the House Committee hearing, **proponent** testimony was provided by Representative Kelly and the Executive Director of the Montgomery County Action Council. The proponents stated the bill is a precaution to ensure the continuance of the Rural Opportunity Zone (ROZ) program until other changes can be made through forthcoming legislation.

Written-only **proponent** testimony was provided by the directors and executive director of Gove County Economic Development, Greeley County Community Development, Kearny County Community Development, Republic County Economic Development, and Scott County Development Committee, Inc. Additional written-only proponent testimony was provided by representatives of the Kansas Hospital Association and League of Kansas Municipalities.

Neutral testimony was provided by the Legislative and Policy Director of the Department of Commerce, who provided a copy of the 2020 Annual Report on the ROZ program. According to the report, 55 of the eligible 77 Kansas counties offer student loan repayment; 20 counties only offer the income tax waiver.

No other testimony was provided.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by Representative Kelly and representatives of the Kansas Department of Commerce and the Montgomery County Action Council. The proponents stated the bill is a precaution to ensure the continuance of the ROZ program until other changes can be made through forthcoming legislation.

Written-only proponent testimony was provided by the directors and executive director of Gove County Economic Development, Greeley County Community Development, Kearny County Community Development, Republic County Economic Development, and Scott County Development Committee, Inc. Additional written-only proponent testimony was provided by representatives of the Kansas Hospital Association and League of Kansas Municipalities.

No other testimony was provided.

The Senate Committee amended the bill to increase the sunset extension from two years to five years, to change the definition of rural opportunity zone, and to expand eligibility for the ROZ income tax credit.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to add provisions related to the child day care tax credit and adopted a technical amendment to remove provisions of the bill that were previously enacted into law.

[*Note:* The Conference Committee only included the provisions related to the child day care services credit. The provisions extending the ROZ program were inserted into the Conference Committee Report for Senate Sub. for HB 2239.]

Senate Sub. for HB 2239 (Net Operating Losses and Employer Credit Disallowance Exemption)

[Note: Senate Sub. for HB 2239 contained numerous provisions. The only provisions inserted in this Conference Committee Report are those originating in SB 543 and SB 556.]

SB 543 (Carried Back Net Operating Loss Carry Forwards)

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

Senate Committee on Assessment and Taxation

In the Senate Committee hearing on March 10, 2022, **proponent** testimony was provided by a representative of BridgeBuilder Tax & Legal Services, stating the bill would allow certain Kansas taxpayers to take advantage of a federal tax reduction without having to increase their Kansas tax liability.

No other testimony was provided.

SB 556 (Employment Credit Disallowance Exceptions)

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of a representative of the Kansas Restaurant and Hospitality Association.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by a representative of Mize CPA and a McDonald's restaurant franchisee, generally stating the bill would allow employers who used the federal tax credits to claim the business expenses generating those credits on their state income taxes.

No other testimony was provided.

The Senate Committee amended the bill to remove a provision that would have sunset the Employee Retention Credit provision after tax year 2021. [Note: The Conference Committee retained this amendment.]

Senate Sub. for HB 2316 (Sales Tax on Utilities, Washburn University, Sales Tax Remittances)

[Note: Senate Sub. for HB 2316 contained numerous provisions. The only provisions inserted in this Conference Committee Report for which background information is available are those originating in SB 359.]

SB 359 (Sales Tax on Utilities and Washburn University)

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

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the Kansas Chamber of Commerce, Kansas Industrial Consumers Group, National Federation of Independent Business, and Wichita Chamber of Commerce, stating the bill would afford commercial and industrial taxpayers the same tax treatment currently provided to residential and agricultural consumers. Written-only proponent testimony was provided by representatives of the Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, Kansas Policy Institute and Renew Kansas Biofuels Association.

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

No other testimony was provided.

Fiscal Information

The Department of Revenue estimates the bill would have the following effect on state receipts.

(Dollars in Millions)			
	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Standard Deduction Adjustments	\$ (1.9)	\$ (8.4)	\$ (15.1)
Social Security Cliff Progressive Phaseout	(2.0)	(7.7)	(11.4)
Retirement Income Subtraction Modification	(9.7)	(32.5)	(33.5)
Child Day Care Services Tax Credit	(0.1)	(0.1)	(0.1)
Utility Sales Tax	-	(46.8)	(52.1)
Sales Tax Remittance Change	(160.4)	-	-
<i>Subtotal State General Fund</i>	<u>\$ (174.1)</u>	<u>\$ (95.5)</u>	<u>\$ (112.2)</u>
Utility Sales Tax	\$ -	\$ (9.0)	\$ (10.0)
Sales Tax Remittance Change	(30.9)	-	-
<i>Subtotal State Highway Fund</i>	<u>\$ (30.9)</u>	<u>\$ (9.0)</u>	<u>\$ (10.0)</u>
Total All Funds	<u>\$ (205.0)</u>	<u>\$ (104.5)</u>	<u>\$ (122.2)</u>

Additionally, the Department of Revenue estimates the provisions related to net operating losses and certain employment credit disallowances, when the disallowances are allowed at 100 percent, could result in a reduction of state receipts of at least \$100.0 million.

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.

The provisions related to Washburn University and Atchison County sales tax would have no state fiscal effect.

Taxation; income tax; sales tax; exemptions; credits; social security benefits; retirement income; child day care services credit; utilities sales tax; COVID-19 retail storefront property tax relief act; net operating losses; standard deduction

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