

CORRECTED
SESSION OF 2021

CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 47

As Agreed to May 4, 2021

Brief*

SB 47 would create and modify law related to income tax.

Kansas Taxpayer Protection Act

The bill would enact the Kansas Taxpayer Protection Act (Act), requiring, on and after January 1, 2022, paid tax return preparers to sign any income tax return prepared by or substantially prepared by the preparer and to include the preparer's federal preparer tax identification number on any such return. Any failure to do so would subject the preparer to a civil penalty of \$50 per return with a maximum of \$25,000 in civil penalties per preparer per year. Any civil penalties assessed could be appealed pursuant to the Kansas Administrative Procedure Act. Any penalties collected would be deposited in the State General Fund.

The bill would authorize the Secretary of Revenue (Secretary) to enjoin any person from acting as a paid tax preparer by seeking a temporary or permanent order from a court of competent jurisdiction enjoining such conduct. Under the bill, an injunction could be issued by a court if the preparer has:

*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>

- Prepared a return that understates the taxpayer's liability due to an "unreasonable position," as that term is defined in the Internal Revenue Code;
- Prepared a return that understates the taxpayer's liability due to "willful or reckless conduct," as that term is defined in the Internal Revenue Code;
- Failed to, when required, furnish a signed copy of the return including the preparer's federal preparer tax identification number, retain a copy of the return, or be diligent in determining eligibility for tax benefits;
- Negotiated a check issued to the taxpayer by the Kansas Department of Revenue without the permission of the taxpayer;
- Engaged in any conduct subject to any criminal penalty provided for in Chapter 79 of the Kansas Statutes Annotated or amendments thereto;
- Misrepresented the preparer's education, experience, or eligibility to practice tax preparation;
- Guaranteed the payment of any tax refund or the allowance of any tax credit; or
- Engaged in any other fraudulent or deceptive conduct that substantially interferes with proper administration of Kansas tax laws.

The bill would allow the Secretary to seek the assistance of the Attorney General or the Attorney General's designee in pursuing such injunctions, and the Secretary would be required to publish an annual report concerning such injunctions on the website of the Kansas Department of Revenue.

Further, the bill would provide that any person, whether or not a resident of Kansas, submits to the jurisdiction of the courts of the State of Kansas for purposes of such injunctions by engaging in any conduct that could give rise to a cause of action under the Act. The bill would provide that legal actions brought under the Act would be brought in the district court of Shawnee County. The Secretary would be permitted to enter into consent judgments with respect to violations of the Act in lieu of actions seeking injunctions.

The bill would authorize the Secretary to promulgate rules and regulations necessary to carry out the provisions of the Act.

Tax Credits for Contributions to the Eisenhower Foundation and the Friends of Cedar Crest Association

The bill would authorize, for tax years 2021 to 2025, nonrefundable income or financial institutions privilege tax credits equivalent to 50.0 percent of certain contributions to the Eisenhower Foundation. Credits would be capped at \$25,000 for any individual income taxpayer and at \$50,000 for any corporation income or privilege taxpayer. The total amount of credits claimed in any fiscal year would be limited to \$350,000.

The bill would authorize an identical credit for contributions to the Friends of Cedar Crest Association, with identical conditions, limits, and total annual credit amounts.

Single City Port Authority Tax Credit

The bill would also extend the sunset on the single city port authority tax credit from the end of tax year 2021 to the end of tax year 2024 and expand the credit to be available to all income taxpayers. Current law limits the credit to corporation income taxpayers.

Fraudulent Compensation

The bill would clarify that victims of identify theft would not owe Kansas individual income tax on any compensation that was fraudulently obtained by another individual and would require the Kansas Department of Revenue to provide a method for any taxpayer to report whether the taxpayer was a victim of fraud and the amount of fraudulent income for the taxpayer reported to the Internal Revenue Service.

Income Tax Returns

The bill would extend the deadline for the filing of Kansas corporation income tax returns to one month after the due date established under federal law. The bill would also provide that no late-filing penalty could be assessed on taxpayers filing state corporation income tax returns when the return is filed within 30 days after having received extensions to file federal returns by the Internal Revenue Service.

For all taxpayer returns other than corporate returns, the bill would provide for filing deadlines to be the due date established by the federal Internal Revenue Code, including any applicable extensions granted by the Internal Revenue Service.

The provisions of the bill would be applicable to returns for tax year 2020 and all future years.

Income Tax Withholding

The bill would provide that for calendar years 2021 and 2022, for wages paid to employees temporarily teleworking in a state other than their primary work location, employers would have the option to withhold income taxes based on the state of each employee's primary work location instead of the state in which the employee is teleworking.

Rural Opportunity Zones Modifications

The bill would extend the sunset on the Rural Opportunity Zone (ROZ) Student Loan Repayment Program from July 1, 2021, to July 1, 2023. The bill would also extend the sunset on the income tax credit two years through tax year 2023, and would also extend reporting requirements for the Secretary of Commerce from January 1, 2022, to January 1, 2024. The bill would also make a technical update.

The bill would change the definition of “rural opportunity zone” from any of the listed 77 counties to any county with a population less than or equal to 40,000.

Effective Date

The bill would be in effect upon publication in the Kansas Register. The provisions relating to the Kansas Taxpayer Protection Act would be effective beginning January 1, 2022.

Conference Committee Action

The Conference Committee agreed to the provisions of SB 47, as passed by the House, regarding the Kansas Taxpayer Protection Act. The Committee agreed to insert:

- The contents of SB 71, as amended by the House Committee on Taxation, regarding tax credits for contributions to the Eisenhower Foundation and the Friends of Cedar Crest Association;
- Provisions of HB 2106, as passed by the Senate, pertaining to:
 - Fraudulent compensation;
 - Income tax returns; and
 - Income tax withholding; and

- The contents of HB 2237, as amended by the Senate Committee on Assessment and Taxation, excluding a provision for eligibility of individuals moving from a metropolitan county to a rural county, and limiting the extension of the sunset to two years.

The Conference Committee also agreed to amend the bill to change the effective date to upon publication in the Kansas Register and specify that the provisions of the Kansas Taxpayer Protection Act are effective beginning January 1, 2022.

Background

SB 47 (Kansas Taxpayer Protection Act)

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of a representative of H&R Block.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing on January 26, 2021, a representative of H&R Block testified as a **proponent** of the bill, stating the provisions of the bill would protect Kansans from the actions of fraudulent income tax return preparers.

The Senate Committee recommended the bill be placed on the Consent Calendar.

House Committee of the Whole

The House Committee of the Whole adopted a technical amendment regarding the effective date of the bill.

SB 71 (Tax Credits for Contributions to the Eisenhower Foundation and the Friends of Cedar Crest Association)

SB 71 was introduced by the Senate Committee on Assessment and Taxation at the request of Senator Claeys.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was offered by a representative of the Eisenhower Foundation and by a member of the Eisenhower family stating the bill's provisions would support the efforts of the Eisenhower Foundation to improve the Eisenhower Presidential Library and Museum.

No other testimony was provided.

House Committee on Taxation

In the House Committee hearing, **proponent** testimony was provided by Representative Barker, two members of the Eisenhower family, and representatives of the Eisenhower Foundation and the Friends of Cedar Crest Association. Proponents generally stated the bill would help to honor and preserve the legacy of Dwight D. Eisenhower by providing support for the Eisenhower Presidential Library. One proponent requested an amendment to the bill to provide the same tax credit provided for by the bill to the Friends of Cedar Crest Association.

No additional testimony was provided.

The House Committee amended the bill to

- Provide for a tax credit for the Friends of Cedar Crest Association comparable to the one for the Eisenhower Foundation; and

- Include the provisions of SB 49, regarding the Single City Port Authority Tax Credit.

[*Note:* The Conference Committee retained these amendments.]

SB 49 (Single City Port Authority Tax Credit)

SB 49 was introduced by the Senate Committee on Assessment and Taxation at the request of a representative of WATCO.

Senate Committee on Assessment and Taxation. In the Senate Committee hearing on SB 49, **proponent** testimony was provided by a representative of WATCO.

Written-only proponent testimony was provided by representatives of the Kansas Grain and Feed Association and the Kansas Cooperative Council.

No other testimony was provided.

The Senate Committee amended the bill to reduce the extension of the sunset from tax year 2041 to tax year 2024. [*Note:* The Conference Committee retained this amendment.]

HB 2106 (Fraudulent Compensation; Income Tax Returns; Income Tax Withholding)

HB 2106 was introduced by the House Committee on Taxation at the request of a representative of the Kansas Chamber of Commerce.

House Committee on Taxation

In the House Committee hearing on January 27, 2021, a representative of the Kansas Chamber of Commerce testified

as a **proponent** of the bill, stating the bill would resolve a conflict between state and federal filing deadlines in a way that would make state filings more practical for taxpayers.

Written-only proponent testimony was provided by a representative of the Council on State Taxation.

No other testimony was provided.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, a representative of the Kansas Chamber of Commerce testified as a **proponent** of the bill, stating the bill would resolve a conflict between state and federal filing deadlines in a way that would make state filings more practical for taxpayers.

Written-only proponent testimony was provided by a representative of the Council on State Taxation.

No other testimony was provided.

The Senate Committee amended the bill to conform the individual income tax return filing deadline to the federal deadline and to insert the provisions related to fraudulently obtained compensation and retirement income. [*Note*: The Conference Committee retained these amendments.]

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to provide employers with withholding flexibility for certain employees and exempt social security benefits from Kansas income tax. [*Note*: The Conference Committee retained these amendments.]

HB 2237 (Rural Opportunity Zones Modifications)

HB 2237 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 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 and to change the definition of rural opportunity zone. [*Note*: The Conference Committee retained these amendments.]

The Senate Committee also amended the bill to expand eligibility for the ROZ income tax credit. [*Note*: The Conference Committee did not retain this amendment.]

Fiscal Information

The Department of Revenue provided the following fiscal information on the bill, as agreed to by the Conference Committee.

(Dollars in Millions)

	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
Taxpayer Protection Act (SB 47)	\$ --	\$ --	\$ --
Eisenhower Foundation Credit (SB 71)	(0.35)	(0.35)	(0.35)
Friends of Cedar Crest Credit (SB 71)	(0.35)	(0.35)	(0.35)
Single-City Port Authority Credit (SB 71)	(0.50)	(0.50)	(0.50)
Remote workforce withholding (HB 2106)	--	--	--
Income tax filing deadlines (HB 2106)	0	0	0
Fraud/identity theft protections (HB 2106)	0	0	0
Expansion of ROZ counties (HB 2237)	(2.15)	(4.97)	(5.47)
Total	<u>\$ (3.35)</u>	<u>\$ (6.17)</u>	<u>\$ -6.67</u>

Note: Missing values indicate the fiscal impact could not be estimated.

The Department noted the provisions of the Taxpayer Protection Act could have an indeterminate positive impact to the State General Fund (SGF).

The Department further noted that it is unable to determine the size of the impact for the provisions of SB 71, but that the estimates reflect the maximum possible fiscal impact.

An estimate of the administrative impact of the bill was not immediately available.

SB 47

According to the fiscal note prepared by the Division of the Budget on SB 47, as introduced, the bill has the potential to increase state revenues by an indeterminate amount. The Office of Judicial Administration and the Office of the Attorney General indicate the provisions of the bill have the potential to increase costs for the court system and litigation costs, but the agencies are unable to provide an estimate of the exact amount of such costs.

SB 71 (Tax Credits for Contributions to the Eisenhower Foundation and the Friends of Cedar Crest Association)

According to the fiscal note prepared by the Division of the Budget on SB 71, as introduced, the Department of Revenue estimates the provisions of the bill would reduce State General Fund revenues by \$350,000 in FY 2022 and each future fiscal year for which the tax credit is available. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

[*Note:* The fiscal note on SB 71 does not apply to prospective credits for contributions to the Friends of Cedar Crest, as provided for by a House Committee on Taxation amendment.]

SB 49 (Single City Port Authority Tax Credit)

According to the fiscal note prepared by the Division of the Budget on SB 49 as introduced, the Department of Revenue indicates enactment of the bill could reduce corporation and individual income tax receipts, but noted no single city port authority credits have been claimed since 2013 and the Department of Revenue does not have data to estimate the amount of credits that would be claimed if the provisions of the bill were enacted. Any fiscal effect associated with the provisions of SB 49 is not reflected in *The FY 2022 Governor's Budget Report*.

A fiscal note on the amended bill was not immediately available.

HB 2106 (Fraudulent Compensation; Income Tax Returns; Income Tax Withholding)

A fiscal note on the amended bill was not immediately available.

HB 2237 (Rural Opportunity Zones Modifications)

According to the fiscal note prepared by the Division of the Budget on HB 2237 as introduced, the Department of Revenue estimates enactment of the bill would decrease SGF revenues by \$2,870,802 in FY 2023 and \$3,157,882 in FY 2024 because of the extension of the state income tax credit into tax year 2022 and tax year 2023. The agency indicates it would require a total of \$7,815 from the SGF in FY 2022 to implement the bill and to modify the automated tax system. The required programming for this bill by itself would be performed by existing staff of the agency. In addition, if the combined effect of implementing the bill and other enacted legislation exceeds the agency's programming resources, or if the time for implementing the changes is too short, additional expenditures for outside contract programmer services beyond the agency's current budget may be required.

The Department of Commerce indicates it is currently responsible for administering the student loan forgiveness component of the ROZ program. For FY 2021, the agency's budget includes \$950,000 from the Economic Development Initiatives Fund to fund the obligations of the student loan forgiveness component of the ROZ program. Under current law, the student loan forgiveness obligations would continue through FY 2026. The agency indicates eliminating the sunset for the student loan forgiveness component of the bill would provide an additional two fiscal years of student loan repayment assistance and administration in FY 2027 and FY 2028.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

A fiscal note on the amended bill was not immediately available.

Taxation; tax preparers; income tax; withholding requirements; fraud; tax credits; Eisenhower Foundation; Friends of Cedar Crest Association; Single City Port Authority Tax Credit; Rural Opportunity Zones; Kansas Income Tax Act

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