SESSION OF 2008

CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2434

As Agreed to May 6, 2008

Brief*

Senate Sub. for HB 2434 would make a number of changes in property tax, income tax, and sales tax law.

PROPERTY TAX PROVISIONS

Property Tax Exemptions – Beds, Bodies, and Boxes

The bill would clarify that the property tax exemption for farm machinery and equipment would include certain beds, bodies, and boxes attached to motor vehicles actually and regularly used for farming or ranching operations. The bill also would clarify that beds, bodies, and boxes attached to motor vehicles (except those attached by manufacturers) would be classified for property taxation purposes as commercial and industrial machinery and equipment.

Prohibition Against Certain Property Reclassification

The bill further would prevent counties from changing classification of certain property from commercial and industrial machinery and equipment to commercial real property for purposes of receiving certain increased state aid payments.

Assessed Valuation Penalties – Late Filing by Utilities

Additional sections in the bill would enact assessed valuation penalties for the late filing of certain property tax

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returns public utilities are required to file with the Director of Property Valuation; and for any property of public utilities which has escaped taxation.

Generally, the late-filing penalty up to the first five months would be equivalent to an additional five percent per month of assessed valuation or an additional $100,000 of assessed valuation, whichever is less. Utilities could be granted one extension of time up to 30 days for good cause shown.

The penalty for failing to file within one year of the current statutory deadline (March 20) would be an additional 50 percent of assessed valuation or $1 million of assessed valuation, whichever is less.

The penalty for escaped property (which has been discovered after valuations have been certified to county clerks) also would be the lesser of 50 percent of assessed valuation or $1 million for each tax year. The Director would be granted authority to abate or reduce escaped property penalties for just cause shown.

Mill Levy Computation and Exemption Requests

Additional language in the bill would require county appraisers to notify county clerks when property tax exemption applications have been filed to help assure that the clerks do not utilize the valuation of the property in question when computing mill levies. A similar provision would require the Director to notify county clerks relative to exemption requests of public utilities.

Property Tax Exemption for All Other Tangible Personal Property

Another section of the bill would provide a property tax exemption, effective in tax year 2009, for certain property classified as "all other tangible personal property" which has a purchase price of $750 or less.

An additional provision would clarify that taxpayers would not be required to file for this exemption at the State Board of Tax Appeals (SBOTA).

Property Tax Exemption – Certain Single-Parent Family Housing

The bill also would amend KSA §79-201b by adding a section to exempt certain real and personal property that is used for housing low-income single-parent families. The property would have to be used by a religious or charitable organization exclusively for the temporary housing (24 months or less) of limited or low-income single-parent families in need of financial assistance. The single parent would have to be enrolled in a life-training skills program. The provisions of this portion of the bill would be retroactive to tax year 2007.

Homestead Provisions

Another provision would exclude from the definition of "income" for homestead property tax refunds those Social Security payments received by individuals who have been receiving Social Security disability payments prior to attaining the age of retirement. This language would effectively implement a grandfather clause to assure that disabled individuals would not see their Homestead refunds reduced by virtue of having reached retirement age.

Higher Education Exemption Clarification

Additional language would clarify the existing property tax law to provide that certain real and personal property leased and used for research and development at a postsecondary educational institution would retain exempt status.

These provisions provide an exemption for real and personal property that is owned by postsecondary educational institutions or by the Board of Regents on behalf of the postsecondary educational institutions. The exemption also would apply when a postsecondary educational institution's property is leased by a for profit company and is actually and regularly used exclusively for research and development purposes, provided any rental income received by the postsecondary educational institution would be used exclusively for educational or scientific purposes. A 5-year limit also would be placed on the duration of the lease or occupancy of the postsecondary educational institution's property for purposes of qualifying for the exemption.

An additional exemption would be extended to buildings and personal property located on property of the University of Kansas or a related endowment association and owned or operated by a Kansas not-for-profit entity for the purpose of strategic technology acquisition and commercialization incubation.

INCOME TAX PROVISIONS

Corporation Income Tax Rate and Apportionment Provisions

New language would provide for greater apportionment of business income, effective in tax year 2008, by authorizing the state to use the functional test (in addition to the current transactional test) as a method for identifying such income. Current Kansas law has been interpreted as providing only the transactional test.

A second new corporation income tax provision would clarify the definition of gross receipts to prevent companies from utilizing "income churning" – a practice that inflates the denominator of the sales factor of the apportionment formula by including certain extraordinary items.

Finally, the top corporation income tax rate, which is effective for taxable incomes above $50,000, would be reduced from 7.35 percent to 7.10 percent, effective for tax year 2008; 7.05 percent for tax years 2009 and 2010; and to 7.00 percent for tax year 2011 and thereafter.

E-Filing Provisions

One e-filing provision would reduce from $100,000 to $45,000 the minimum annual level of sales and withholding tax remittances beyond which electronic filing may be mandated.

A second stipulation would require that paid individual income tax preparers submitting 50 or more returns per year to file at least 90 percent of such returns electronically. This requirement could be waived for paid preparers who successfully demonstrate a hardship to the Secretary of Revenue.

Individual Income Tax – Reciprocity

One provision of the bill would disallow a Kansas individual income tax deduction relative to certain property tax and assessments paid in other states by residents of those states when such states have similarly prevented Kansas residents from claiming property taxes and assessments paid in Kansas as income tax deductions. The disallowance, which is structured as an "addition modification" to federal adjusted gross income prior to the determination of Kansas adjusted gross income, would be retroactive to tax year 2007.

Income Tax Credits – Disaster Relief

The bill also would provide income, premiums or privilege tax credits for certain qualified capital investments made in businesses located in and around nine cities (Chanute, Coffeyville, Erie, Fredonia, Greensburg, Independence, Iola, Neodesha, and Osawatomie) damaged during two specific federal disaster declarations in 2007.

Qualified capital investments, which would be defined to include investments in "construction, equipment, reconstruction, repair, enlargement, furnishing or remodeling of real property" as well as the "purchase, lease or repair of tangible personal property," would exclude investments in "inventory or property held for sale in the ordinary course of business." The credits, which would be limited to a maximum of $100,000 for each taxpayer, would be available relative to investments in businesses located within the city limits of the nine cities, as well as businesses located up to one mile outside of such limits.

Taxpayers generally would be able for tax years 2008-2010 to claim non-refundable credits equivalent to 10 percent of the qualified capital investments; or refundable credits equivalent to 5 percent of such investments. All credits would be reduced by amounts equal to assistance payments taxpayers previously had received pursuant to the provisions of KSA 75-3713e or the Southeast Kansas Business Restoration Assistance Program approved by the State Finance Council.

The maximum amount of credits would be capped at $5.0 million for any given year.

SAFE Senior Tax Credit Provisions

The bill also would enact the Selective Assistance for Effective Senior Relief ("SAFE Senior") Act, which would provide a refundable income tax credit beginning in tax year 2008 that would be available to certain senior citizens to help reimburse a portion of property taxes paid on their homesteads.

Those taxpayers age 65 or older with household income of 120 percent or less of the federal poverty level for two persons (currently $16,800) would be eligible to claim the tax credit, which would be equivalent to 45 percent of property taxes actually and timely paid on real or personal property used for residential purposes which was also their principal place of residence. Beginning in tax year 2011, the credit would increase to 75 percent of such amount.

The SAFE Senior credit would be supplemental to the Homestead Property Tax Refund Act, and taxpayers could not claim the credit for a given tax year if they have also claimed a Homestead refund.

"Household income" would be defined to mean all income, including payments received under the federal Social Security Act, received by all persons of a household in a calendar year while members of such household.

SALES TAX PROVISIONS

Additional language would extend by a sales tax exemption by one year relative to certain purchases incurred in the restoration or reconstruction of business facilities located in Kiowa County that were damaged by severe weather in 2007. The project exemption certificates would have to be obtained prior to June 30, 2009 (as opposed to June 30, 2008 under prior law).

New sales tax exemptions would be provide for entry or participation fees, charges or tickets by Guadalupe Health Foundation for such group's annual fund-raising event for the purpose of providing health care services for uninsured workers; and for purchases by or on behalf of Wayside Waifs, Inc., relative to an annual fund-raising event to support the care of homeless and abandoned animals, animal adoption efforts, education programs for children, efforts to reduce animal over-population, and animal welfare services, as well as all sales by or on behalf of such group (including entry or participation fees or charges).

The bill also would provide a sales tax exemption relative to certain purchases incurred in the construction, reconstruction, enlarging, or remodeling of business facilities located in counties declared to be disaster areas pursuant to Presidential Disaster Declaration DR 1711, provided such facilities were damaged or destroyed by flooding or other severe weather. Project exemption certificates would need to be obtained within 60 days of the effective date of the legislation (publication in the *Kansas Register*).

Conference Committee Action

The Conference Committee on May 3 agreed to insert all of the other provisions hereinbefore described, many of which had been contained previously in various versions of SB 444, HB 2750, HB 2641, HB 2762, HB 2529, and SB 471.

Background

The provisions of the original HB 2434 dealt with certain interlocal agreements and were enacted in 2007 HB 2044.

The Senate Assessment and Taxation Committee on March 24, 2008, recommended that the bill's original provisions be stripped; that a substitute bill be created; and that the subject matter of SB 665, along with various amendments agreed to by interested parties in this latter bill, be inserted.

The provisions of the Conference Committee Report with an identifiable fiscal note would be expected to change receipts as follows:

($ in millions)

	FY 09	FY 10	FY 11	FY 12	FY 13	5-yr Total
Homestead	-0.400	-0.400	-0.400	-0.400	-0.400	-2.000
Guadalupe Health	-0.011	-0.011	-0.012	-0.012	-0.013	-0.059
Wayside Waifs	-0.008	-0.008	-0.009	-0.009	-0.009	-0.043
Income churning	2.500	2.500	2.500	2.500	2.500	12.500
Disaster income tax	-5.000	-5.000	-5.000	0.000	0.000	-15.000
E-Filing provisions	1.000	1.000	1.000	1.000	1.000	5.000
SAFE senior credit	-2.040	-2.040	-2.040	-3.400	-3.400	-12.920
Disaster sales tax	-2.600	0.000	0.000	0.000	0.000	-2.600
Funct., trans. tests	20.000	20.000	20.000	20.000	20.000	100.000
Top corp rate	-13.300	-15.900	-15.900	-18.600	-18.600	-82.300
These Provisions	0.141	0.141	0.139	1.079	1.078	2.578

property tax; income tax; sales tax law