

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 430**

As Agreed to March 30, 2010

Brief*

SB 430 would make several changes to 2009 legislation designed to provide a “haircut” for selected income tax credits; make a number of changes to various sales tax administration statutes designed to keep Kansas in conformity with the multi-state Streamlined Sales and Use Tax Agreement (SSUTA); would amend a number of different tax statutes relative to the definition of the term “willfully”; would impose a small fee under certain circumstances for taxpayers’ entering into installment payment plans; would move administration of local option intangibles taxes from the state to the local level; and would authorize the Department of Revenue to require electronic filing of withholding forms and sales or use tax returns.

Income Tax Haircut Provisions

The bill would make various changes to haircut provisions adopted in 2009 designed to provide a 10 percent “haircut” for certain income tax credits.

The bill would make a number of technical corrections involving the distinction between “refundable” and “nonrefundable” credits relative to the 10 percent reduction for tax years 2009 and 2010; and further clarify the tax treatment of two different credits (for contributions for deferred maintenance at certain educational institutions and for capital investments relative to certain declared disasters), which may at different times be both refundable and non-refundable.

The bill further would repeal a specific \$3.75 million cap for FY 2011 that had been imposed on historic preservation income tax credits.

Additionally, for tax year 2010, the bill would replace the 10 percent haircut for regional foundation tax credits enacted last year with a specific 10 percent reduction (from \$2.0 million to \$1.8 million per year) in a statutory cap for FY 2011 that had existed prior to 2009. The 10 percent haircut that had been applicable for Kansas Center for Entrepreneurship contribution credits similarly would be replaced with a specific 10 percent reduction (from \$2.0 million to \$1.8 million) for FY 2011.

Finally, additional language would clarify that the portion of angel investor tax credits that had been subject to the haircut provisions in tax years 2009 and 2010 could be carried forward to future tax years.

Streamlined Sales Tax Provisions

Additional sections of the bill would make statutory amendments necessary to keep Kansas in conformity with SSUTA.

One section would clarify the circumstances under which sales tax exemption certificates taken in “good faith” could relieve retailers from sales tax liability. One provision would stipulate that retailers would not be relieved from liability if it is discovered during the audit process that the seller had knowledge of materially false information or otherwise knowingly participated in activities intended to purposefully and unlawfully evade the tax.

An additional change would remove provisions requiring certificates to contain specific statutory subsection references to the exemptions being claimed, and signatures of officials of certain not-for-profit entities. Also eliminated would be a current requirement that payment be made by an exempt entity’s check, voucher, or warrant in order for the retailer to acquire protection from liability.

New language also would relieve retailers under most circumstances from the requirement to collect sales tax using

the new sales tax rate for the first 30 days after the enactment date of a law changing the statewide sales and use tax rate.

A number of technical adjustments also would be made to KSA 2009 Supp. 79-3672 relative to “direct mail” sourcing provisions. One clarification would provide that direct mail, which is generally defined as printed material delivered by U.S. mail or other delivery services to a mass audience when the cost of the material is not billed directly to the recipients, would not encompass purchases of data processing services involved in producing the mail.

Definition of “Willfully”

The bill further would amend a number of different tax statutes to specifically provide that the definition of the term “willfully” relative to persons who willfully fail to collect state taxes would have the same meaning such term has for federal tax purposes pursuant to the Internal Revenue Code.

Installment Payment Plan Fees

The bill also would impose a \$10 fee for any delinquent taxpayer who enters into an installment payment plan in excess of ninety days from the date of the payment plan agreement. This fee would be remitted to the State Treasurer for deposit in the Recovery Fund for Enforcement Actions and Attorney Fees (RFEAAF). Additional language would provide that the first \$350,000 in certain delinquent taxes collected also be returned to the RFEAAF.

Intangibles Tax

Persons with local intangibles tax liability would be required to file returns with county clerks in lieu of the Department of Revenue. The Director of Taxation would continue to develop the intangibles tax forms necessary and subsequently provide the forms to county clerks.

E-Filing

Additional language in the bill would authorize the Director of Taxation to require electronic filing of withholding tax forms and sales and use tax returns.

Conference Committee Action

The Conference Committee agreed to adopt the House-passed version of SB 430; to insert the provisions of SB 429 and HB 2519 relating to SSUTA; to insert HB 2520 relating to the “willfully” definition; to insert the provisions of SB 406 relating to the installment payment plan fees; to include the diversion of receipts language relative to collections by certain revenue department personnel; and to insert those provisions of Sub HB 2521 relating to the intangibles tax administration and electronic-filing requirements.

Background

The latest fiscal information from the Department of Revenue indicates that the haircut adjustment sections of the bill would be expected to reduce FY 2011 SGF receipts by \$6.85 million. (Of this amount, \$6.75 million is attributable to the historic preservation credit provision; and \$0.1 million is attributable to the Center for Entrepreneurship provision.) The “willfully” definitional provisions would be expected to increase FY 2011 receipts by \$0.438 million.

The installment payment plan fees would be expected to produce \$0.340 million in FY 2011 receipts for the RFEAAF; and that fund would receive the first \$0.350 million in certain delinquent tax collections by Department of Revenue department personnel hired with receipts attributable to the \$10 fees. The net increase in RFEAAF receipts therefore would be \$0.690 million.

The Department of Revenue also indicated that an additional \$7.0 million in FY 2011 SGF receipts would be produced as a result of additional personnel hired using the \$0.690 million in RFEAAF receipts.

The combined impact on FY 2011 SGF receipts from these sections of the bill therefore would be expected to be an increase of \$0.588 million.

Finally, the Department of Revenue further testified that absent enactment of the SSUTA conformity language, Kansas could be found out of compliance during the 2010 governing board review process conducted later this fall; and that as a member in good standing under current law, Kansas benefits from voluntary compliance remittances submitted by participating remote retailers estimated to be \$32.5 million in FY 2011.

taxation, provisions

*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>