

## **Income, Property, and Sales Tax; Miscellaneous Provisions; SB 410**

**SB 410** amends law related to income tax, property tax, and sales tax.

For income tax purposes, the bill makes changes to the SALT Parity Act, provides for subtraction modifications for certain net operating losses and tax credit disallowances, clarifies and modifies the disallowed business interest deduction, reduces penalties for late remittance of withholding taxes, and extends the single city port authority income tax credit.

For property tax purposes, the bill modifies the revenue neutral rate notification and hearing process, makes changes to property tax exemptions for certain electric generation property, codifies property valuation adjustments related to adverse influences affecting agricultural land, specifies land classification related to agritourism, makes changes related to filing statements for personal property and certain property appeal procedures, and authorizes the use of teleconferencing for certain State Board of Tax Appeals (BOTA) proceedings.

For sales tax purposes, the bill authorizes elections to be held for additional sales tax authority for Marshall, Neosho, and Rawlins counties.

### ***Income Tax Changes***

#### ***SALT Parity Act Changes***

The bill includes a legislative finding that the purpose of the SALT Parity Act tax credit is to avoid double taxation of income on electing pass-through entity owners.

The bill specifies that the tax rate for tax under the SALT Parity Act is the highest rate of tax imposed by the Kansas individual income tax.

The bill also clarifies that the tax on electing entities under the SALT Parity Act is to be levied on:

- The *pro rata* or distributive share of the entity's income for each non-resident owner that is attributable to Kansas; and
- The *pro rata* or distributive share of the entity's income for each resident owner calculated either before or after allocation and apportionment to Kansas. Entities will be required to use the same method of calculation for all resident owners.

The bill provides that tax credits attributable to the electing entity are to be passed through to and claimed by the entity owner.

The bill also provides that addition and subtraction modifications and expensing deductions that are attributable to the activities of electing pass-through entities are to be claimed on the tax returns of the entity and the entity's owners in the same proportion and manner as they would have applied without the SALT Parity Act election.

The provisions of the bill are retroactive to tax year 2022.

#### *Net Operating Loss Subtraction Modification*

The bill creates a subtraction modification allowing taxpayers who carried back federal net operating losses in tax years 2018 through 2020 pursuant to the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act to subtract such amounts from their income for purposes of determining Kansas adjusted gross income. Taxpayers will be permitted to carry forward such net operating loss for up to 20 years if the amount exceeds the Kansas adjusted gross income of the taxpayer.

The bill extends the deadline for eligible taxpayers to file amended returns for tax years 2018 through 2020 until April 15, 2025.

#### *Federal Tax Credit Disallowance Subtraction Modifications*

The bill enacts, beginning in tax year 2021, a subtraction modification in determining Kansas adjusted gross income equal to the amount of federal disallowance related to any federal credit under Subsection (a) of Section 280C of the federal Internal Revenue Code and, effective for tax years 2020 and 2021, 50.0 percent of the amount of federal disallowance related to the Employee Retention Tax Credit. [Note: Subsection (a) of Section 280C of the Internal Revenue Code generally pertains to disallowed deductions associated with employment-related tax credits.]

For the Employee Retention Tax Credit disallowance, the taxpayer will be required to prove that Kansas income tax had previously been paid on the disallowed amount and will be permitted to file a claim for refund or amended return on or before April 15, 2025.

The bill also eliminates statutory references to repealed federal tax credits.

#### *Disallowed Business Interest*

The bill clarifies the addition and subtraction modifications for disallowed business interest to specify that the addition modification is applicable to interest expenses paid or accrued in previous tax years and carried forward to the current tax year and that the subtraction modification is for interest expense actually paid or accrued in the current tax year.

The bill also provides for tax year 2021 a subtraction modification for interest expenses paid or accrued in tax year 2021 to include the sum of interest expenses paid or accrued in tax years 2018, 2019, and 2020, less the sum of the amounts allowed as a deduction pursuant to Section 163 of the federal Internal Revenue Code in tax years 2018, 2019, and 2020.

#### *Withholding Tax Remittance Penalties*

The bill replaces the 15.0 percent penalty for employers not timely remitting withholding taxes with a graduated penalty system providing for penalties as follows:

- 2.0 percent, if the remittance is 1 to 5 days late;
- 5.0 percent, if the remittance is 6 to 15 days late;
- 10.0 percent, if the remittance is more than 15 days late; and
- 15.0 percent, if the remittance is more than 15 days late and the Department of Revenue notifies the taxpayer regarding the delinquency, but the tax is not remitted within 10 days of the notification.

### *Single City Port Authority Tax Credit Extension*

The bill extends the income tax credit attributable to the retirement of indebtedness authorized by a single city port authority, currently scheduled to expire after tax year 2024, through tax year 2029.

### **Property Tax Changes**

#### *Revenue Neutral Rate Changes*

The bill specifies that county clerks are not required to send hearing notices to owners of property that is exempt from taxation.

The bill requires the vote of a governing body to exceed the revenue neutral rate to take place on the same day as the commencement of the public hearing to exceed the rate.

The bill also authorizes governing bodies that do not hold hearings pursuant to the revenue neutral rate process to exceed their revenue neutral rate in the case where the final taxable valuation of the taxing entity is less than the estimated value used to calculate the revenue neutral rate, as long as the actual tax levy of the taxing entity is equal to or less than the tax levied in the previous year.

The bill also replaces provisions establishing minimum requirements for the contents of the revenue neutral rate hearing notice with new provisions specifying the heading and opening statement of the notice and requiring the notice to include:

- The appraised and assessed value of the taxpayer's property for the current and previous year;
- The amount of property tax of each taxing subdivision on the property from the previous year's tax statement;
- The estimated amount of property tax for the current year of each taxing subdivision based on the revenue neutral rate;

- The estimated amount of property tax for the current year of each taxing subdivision based on the greater of the revenue neutral rate or the proposed tax rate provided by the subdivision to the county clerk, if the subdivision has notified the clerk of its intent to exceed the revenue neutral rate;
- The difference between the current year's maximum tax and the previous year's tax, in both dollars and percent, for each taxing subdivision;
- The date, time, and location of the hearing for each subdivision intending to exceed the revenue neutral rate; and
- For each taxing subdivision holding a revenue neutral rate hearing, the difference between the current year's maximum tax and the estimated tax at the revenue neutral rate.

The bill also extends for one additional year, through calendar year 2024, the state reimbursement of printing and postage costs incurred when county clerks are required to mail notices of proposed tax increases beyond the revenue neutral rate. The bill also extends the transfer from the State General Fund to the Taxpayer Notification Costs Fund to reimburse the printing and postage costs for one additional year.

#### *Electric Generation Facility Exemptions*

The bill exempts the following property, as defined by the bill, from all property and ad valorem taxes:

- Any new electric generation facility, including nuclear energy facilities, for which construction begins on or after January 1, 2025;
- Any new addition to an electric generation facility constructed or installed on or after January 1, 2025; and
- Any new pollution-control device constructed or installed at an electric generation facility on or after January 1, 2025.

The new exemption does not apply to electric generation facilities that convert renewable energy sources to electricity and applies for ten taxable years following the commencement of construction or installation of the property. [*Note:* Such facilities continue to be eligible for property tax exemptions under existing law.]

The bill specifies that existing property and ad valorem tax exemptions for electric generation facilities and additions to such facilities, including pollution-control devices, only apply to property for which an application for exemption is filed prior to December 31, 2024.

### *Agricultural Land Adverse Influence*

The bill codifies the adjustments reducing the taxable value of agricultural land on the basis of adverse influences not sufficiently accounted for in the agricultural use valuation formula that are currently provided for in administrative guidance from the Property Valuation Division of the Department of Revenue.

The codified adverse influences include, but are not be limited to:

- Canopy cover, for which value is reduced from 20.0 to 50.0 percent based upon canopy covering of 25.0 to 100.0 percent of the impacted land;
- Salinity and alkalinity, for which value is reduced based upon a taxpayer-provided soil analysis from a crop consulting service;
- Water table fluctuation, for which value is reduced based upon the results of a U.S. Department of Agriculture Natural Resources Conservation Service review of the water table levels of the impacted land; and
- Newly constructed drainage and flood control areas, for which value is reduced based upon the impact on land use from newly constructed drainage and flood control areas.

### *Agritourism Land Classification*

The bill specifies, beginning in tax year 2021, that land devoted to agricultural use includes land and buildings utilized as part of a registered agritourism activity at a registered agritourism location by a registered agritourism operator.

The selling of merchandise associated with the registered agritourism activity by the agritourism operator will not change the classification of the land or buildings as a result of such sales.

### *Residential Valuation Appeals*

The bill permits the use of appraisals performed by Kansas Certified Residential Real Property Appraisers for the equalization appeal procedure wherein a taxpayer files a third-party fee simple appraisal within 60 days after the notice of informal meeting results or final determination is mailed to the taxpayer. [*Note:* The law previously provided for only the use of appraisals performed by Kansas Certified General Real Property Appraisers for this appeal procedure.]

### *Personal Property Filing Changes*

The bill limits the instances in which a taxpayer must file statements regarding tangible personal property for tax purposes, reduces penalties for late filings, and specifies

circumstances in which extensions of time for filing such statements and abatements of penalties are to be provided.

The bill provides that if an initial statement listing tangible personal property for taxation has been filed with a county appraiser, future annual filings will only be required when there has been a change to report that is related to the property previously listed or to the initial statement.

The bill reduces the penalty for late filing of oil and gas leases and tangible personal property from 5.0 percent to 2.0 percent per month with the maximum penalty for late filing being reduced from 25.0 percent to 10.0 percent. The penalty for a failure to file resulting in escaped taxation is reduced from 50.0 percent to 12.5 percent.

The bill requires county appraisers, who currently have discretionary authority to do so, to grant an extension of a reasonable amount of time for taxpayers to file tangible personal property for taxation upon a showing of good cause.

County appraisers and BOTA are required to abate late filing penalties under cases of excusable neglect or in the event the property has been repossessed by a creditor who paid the taxes on the property. [Note: Prior law provided only BOTA with discretionary authority to abate such penalties.]

Beginning in tax year 2022, such good cause and excusable neglect is specified to include instances in which tangible personal property had been previously classified as real property or a fixture to real property and was reclassified to be personal property. Such instances are specified to include machinery and equipment used in industries of grain storage and processing and ethanol or other biofuels processing.

### *Board of Tax Appeals Teleconferencing*

The bill allows BOTA to conduct small claims and expedited hearings and appeals by teleconference or video conference as directed by the Chief Hearing Officer or a designee. [Note: Prior law required such hearings and appeals to be held in the county or an adjacent county of where the property is located.]

### **Sales Tax Changes**

The bill authorizes the boards of county commissioners of Marshall County, Neosho County, and Rawlins County to submit to the voters of the respective county a question of imposing a countywide sales tax:

- For Marshall County, at a rate of 1.0 percent for the purpose of financing construction of a jail facility;
- For Neosho County, at a rate of 0.5 percent for the purpose of financing the costs of roadway and bridge construction, maintenance, and improvement; and

- For Rawlins County, at a rate of up to 1.0 percent for the purpose of financing the construction or remodeling of attendance centers or other facilities of any school district within the county.

The respective taxes will expire upon their proceeds being sufficient to pay all costs authorized in financing the costs of the purposes described above.

The proceeds of the taxes are not subject to apportionment with the cities of the respective county.