SESSION OF 2011

CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 193

As Agreed to May 4, 2011

Brief*

SB 193 would make several changes with respect to a requirement that social security numbers be provided in order to claim most state tax credits; provide other administrative changes relative to the food sales tax rebate program; expand the Promoting Employment Across Kansas (PEAK) program; establish a formula for calculating property taxes due on certain land legally described in plats; make several changes in High Performance Incentive Program (HPIP) tax credits, including extending the carry-forward period from 10 to 16 years; and enact a new sales tax exemption for game birds.

Social Security Number/Tax Credit Requirements

The bill would provide that most credits available for income tax purposes would no longer be allowed relative to individuals and their spouses and dependents for whom valid federal Social Security numbers have not been provided. This disallowance provision would not apply to the credit for taxes paid to other states pursuant to KSA 79-32,111.

Additional provisions would clarify that the disallowance provisions would apply specifically to tax credits for dependent care and for food sales tax rebates (in addition to most other tax credits); and that food sales tax rebate claims

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would be required to contain clear statements as to which of the three qualifying demographic criteria claimants are seeking to utilize (age 55 and above, dependent children below age 18, or disability).

Language in the bill further would provide that unless another identifying number has been assigned to an individual by the federal Internal Revenue Service for purposes of filing such individual's federal income tax return, Social Security numbers issued to the individual, the individual's spouse, and all dependents would be required to be used as the identifying number and included on Kansas returns.

PEAK Provisions

Additional sections of the bill would expand the PEAK program in several ways.

The program, which provides for a diversion of 95 percent of certain employee income taxes away from the State General Fund (SGF), would be expanded from January 1, 2013 through December 31, 2014 to include "retained jobs," which generally would be defined to mean jobs which would otherwise be lost but for employer participation in PEAK. The Secretary of Commerce would be required to consult with the Secretary of Revenue and the Governor prior to awarding PEAK benefits for retained jobs. The maximum amount of benefits that could be awarded for retained jobs would be limited to $1.2 million in FY 2013; $2.4 million in FY 2014; and $1.2 million in FY 2015. The job retention benefits would sunset altogether in tax year 2015.

Additional changes would allow not-for-profit corporations to enter the program; and allow qualified companies to utilize or contract with all third-party employers (as opposed to only unrelated third-party employers).

The bill also would effectively provide a 95 percent individual income tax exemption (through an income tax credit mechanism) for certain Kansas source income received by Kansas resident owners of qualified companies who materially participate in the business activities.

Finally, a $4.8 million cap for each fiscal year on the total amount of benefits granted to expanding businesses would be increased to $6.0 million in FY 2013.

Property Taxes on Certain Land Described in Plats

Additional sections of the bill would provide a statutory formula for calculating and collecting extant property taxes and assessments on certain land legally described in plats filed with county registers of deeds.

The new language would require that all property taxes and assessments levied against an original "parent" parcel be collected prior to the recording of the plat by a register of deeds.

For situations when the amount of property tax levied by a taxing subdivision has not yet been certified, an estimated tax formula utilizing the most recent year's mill levy and the latest certified valuation would be established for purposes of the collection prerequisite relative to having plats recorded. After the tax roll has been certified, refunds of any excess collections under the estimated tax formula subsequently would be funded, or additional liability would be assessed in the case of insufficiency.

HPIP Provisions

The current 10-year limitation on the carry-forward of HPIP credits would be extended to 16 years. A requirement under current law that taxpayers continue to be re-certified annually by the state as qualifying for the program (in order to authorize unused tax credits to be carried forward) would be eliminated and would be replaced with new language that would require taxpayers to self-certify under oath. One additional provision would clarify that all unused credits which had expired prior to tax year 2011 would not be revived by this legislation.

Game Birds

The bill also would provide a sales tax exemption for all sales of game birds for which the primary purpose is use in hunting.

Conference Committee Action

The Conference Committee agreed to strike language adopted by the House that would have disallowed income tax deductions for certain taxpayers not having valid Social Security numbers. The Conference Committee also agreed to insert a modified version of the PEAK provisions that had previously passed the House in House Sub. for SB 196; to include some modified provisions from SB 108 relating to registers of deeds and the recording of plats; to include selected HPIP tax credit provisions from SB 61; and to include the sales tax exemptions for game birds from Sub. for HB 2161.

Background

The original bill dealt only with the aforementioned food sales tax rebate program provisions.

Senator Love appeared as a proponent in the Senate Assessment and Taxation Committee; and Representative Calloway appeared as a proponent in the House Taxation Committee.

The Senate Assessment and Taxation Committee amendment was technical.

The House Taxation Committee amended the bill to incorporate the provisions of HB 2348 (relating to deductions and most income tax credits) and HB 2349 (relating to the credit for dependent care expenses).

The Department of Revenue observed in the fiscal note on HB 2348, which was for a time fully incorporated in SB 193, that “enactment of this legislation may trigger litigation in federal courts raising one or more perceived constitutional violations.” In response to some of those perceived violations, the Conference Committee agreed to limit the Social Security number mandate generally only to various income tax credits (as opposed to most deductions as well as credits).

The latest fiscal note available indicates that the Conference Committee Report would be expected to have the following impact on SGF receipts:

($ in millions)

	FY 12	FY 13	FY 14	FY 15	FY 16	5-yr total
SSN re Credits	$ 2.400	$ 2.400	$ 2.400	$ 2.400	$ 2.400	$ 12.000
PEAK job retention	0.000	(1.200)	(2.400)	(1.200)	0.000	(4.800)
HPIP 10-16 yrs	(0.500)	(1.000)	(1.500)	(2.000)	(2.500)	(7.500)
Game Birds	(0.060)	(0.062)	(0.064)	(0.067)	(0.069)	(0.322)
Total	$ 1.840	$ 0.138	$ (1.564)	$ (0.867)	$ (0.169)	$ (0.622)

income tax credits; social security numbers; PEAK; HPIP