

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 83** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill, as printed as House Substitute for SENATE BILL No. 83, as follows:

On page 20, following line 35, by inserting:

"New Sec. 8. (a) The following described property, to the extent herein specified, shall be exempt from all property taxes levied under the laws of Kansas:

Any new automobile manufacturing property.

(b) The provisions of subsection (a) shall apply from and after the later of the purchase or commencement of construction of such property and continue only for a period thereafter until 10 calendar years following the calendar year in which construction of such property is completed.

(c) The provisions of this section shall apply to all taxable years beginning after December 31, 2011.

(d) The owner of any new automobile manufacturing property shall pay in lieu of taxes in an amount mutually agreed to by the governing body of the appropriate taxing subdivisions and the owners as long as this exemption is in effect. The in lieu of taxes shall be paid at the same time taxes are required to be paid pursuant to K.S.A. 79-2004 and 79-2004a, and amendments thereto. The county treasurer shall apportion such in lieu of tax payments among the taxing subdivisions of this state in the territory in which the

facility is located. Any payment in lieu of taxes shall be divided by the county treasurer among such taxing subdivisions in the same proportion that the amount of the total mill levy of each individual taxing subdivision bears to the aggregate of such levies of all the taxing subdivisions among which the division is to be made. The county treasurer shall pay such amounts to the taxing subdivisions at the same time or times as their regular operating tax rate mill levy is paid to them. Based upon the assessed valuation which such facility would have if it were upon the tax rolls of the county, the county clerk shall compute the total of the property taxes which would be levied upon such facility by all taxing subdivisions within which the facility is located if such property were taxable.

(e) As used in this section:

(1) "Appropriate taxing subdivisions" means the county, city or unified government jurisdiction in which the new automobile property is located; and

(2) "new automobile manufacturing property" means any real property purchased or constructed after December 31, 2011, owned by a business with an NAICS code of 336111, provided such property:

(A) Includes a building or addition to a building constructed after December 31, 2011, having not less than 50,000 square feet of floorspace; and

(B) was purchased or constructed after December 31, 2011, for a total cost of not less than \$10,000,000 including the cost of both the land and buildings.

New Sec. 9. (a) On and after July 1, 2013, if any person sells or leases tangible personal property to the state, a state department, a state agency or an agent thereof, that

person and any affiliated person shall, as a prerequisite for any such sale or lease, register with the department of revenue as a retailer and comply with all legal requirements imposed on a retailer, including the requirement to collect and remit sales or use tax on all taxable sales of tangible personal property to customers in this state.

(b) Any ruling, agreement or contract, whether written or oral, express or implied, between a retailer and this state's executive branch, or any other state agency or department, stating, agreeing or ruling that the retailer is not required to collect sales and use tax in this state despite the presence of a warehouse, distribution center or fulfillment center in the state that is owned or operated by the retailer or an affiliated person of the retailer shall be null and void, unless it is specifically approved by a majority vote of each of the chambers of the Kansas legislature.

(c) As used in this section, "affiliated person" means any person that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code as the retailer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the retailer as a corporation that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code.

New Sec. 10. (a) On and after July 1, 2013, watercraft shall be appraised at fair market value determined therefor pursuant to K.S.A. 79-503a, and amendments thereto, and assessed at the percentage of value as follows: (1) 11.5% in tax year 2014; and (2) 5% in tax year 2015 and all tax years thereafter. In no case shall the assessed value of any

watercraft, as determined under the provisions of this section, cause the tax upon such watercraft to be less than \$12.

(b) As used in this section, "watercraft" means any vessel requiring numbering pursuant to K.S.A. 32-1110, and amendments thereto. Each watercraft may include one trailer which is designed to launch, retrieve, transport and store such watercraft and any nonelectric motor or motors which are necessary to operate such watercraft on the water.

Sec. 11. On July 1, 2013, K.S.A. 2012 Supp. 74-2433f is hereby amended to read as follows: 74-2433f. (a) There shall be a division of the state court of tax appeals known as the small claims and expedited hearings division. Hearing officers appointed by the chief hearing officer shall have authority to hear and decide cases heard in the small claims and expedited hearings division.

(b) The small claims and expedited hearings division shall have jurisdiction over hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, and hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and ~~acts amendatory thereof or supplemental amendments~~ amendments thereto, with regard to single-family residential property. The filing of an appeal with the small claims and expedited hearings division shall be a prerequisite for filing an appeal with the state court of tax appeals for appeals involving single-family residential property.

(c) At the election of the taxpayer, the small claims and expedited hearings

division shall have jurisdiction over: (1) Any appeal of a decision, finding, order or ruling of the director of taxation, except an appeal, finding, order or ruling relating to an assessment issued pursuant to K.S.A. 79-5201 et seq., and amendments thereto, in which the amount of tax in controversy does not exceed \$15,000; (2) hearing and deciding applications for the refund of protested taxes under the provisions of K.S.A. 79-2005, and amendments thereto, where the value of the property, other than property devoted to agricultural use, is less than \$2,000,000 as reflected on the valuation notice; and (3) hearing and deciding appeals from decisions rendered pursuant to the provisions of K.S.A. 79-1448, and amendments thereto, and of article 16 of chapter 79 of the Kansas Statutes Annotated, and ~~acts amendatory thereof or supplemental~~ amendments thereto, other than those relating to land devoted to agricultural use, wherein the value of the property is less than \$2,000,000 as reflected on the valuation notice.

(d) In accordance with the provisions of K.S.A. 74-2438, and amendments thereto, any party may elect to appeal any application or decision referenced in subsection (b) to the state court of tax appeals. Except as provided in subsection (b) regarding single-family residential property, the filing of an appeal with the small claims and expedited hearings division shall not be a prerequisite for filing an appeal with the state court of tax appeals under this section. Final decisions of the small claims and expedited hearings division may be appealed to the state court of tax appeals. An appeal of a decision of the small claims and expedited hearings division to the state court of tax appeals shall be de novo.

(e) A taxpayer shall commence a proceeding in the small claims and expedited hearings division by filing a notice of appeal in the form prescribed by the rules of the state court of tax appeals which shall state the nature of the taxpayer's claim. Notice of appeal shall be provided to the appropriate unit of government named in the notice of appeal by the taxpayer. In any valuation appeal or tax protest commenced pursuant to articles 14 and 20 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto, the hearing shall be conducted in the county where the property is located or a county adjacent thereto. In any appeal from a final determination by the secretary of revenue, the hearing shall be conducted in the county in which the taxpayer resides or a county adjacent thereto.

(f) The hearing in the small claims and expedited hearings division shall be informal. The hearing officer may hear any testimony and receive any evidence the hearing officer deems necessary or desirable for a just determination of the case. A hearing officer shall have the authority to administer oaths in all matters before the hearing officer. All testimony shall be given under oath. A party may appear personally or may be represented by an attorney, a certified public accountant, a certified general appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee of the taxpayer. A county or unified government may be represented by the county appraiser, designee of the county appraiser, county attorney or counselor or other representatives so designated. No transcript of the proceedings shall be kept.

(g) The hearing in the small claims and expedited hearings division shall be conducted within 60 days after the appeal is filed in the small claims and expedited hearings division unless such time period is waived by the taxpayer. A decision shall be rendered by the hearing officer within 30 days after the hearing is concluded and, in cases arising from appeals described by subsections (b) and (c)(2) and (3), shall be accompanied by a written explanation of the reasoning upon which such decision is based. Documents provided by a taxpayer or county or district appraiser shall be returned to the taxpayer or the county or district appraiser by the hearing officer and shall not become a part of the court's permanent records. Documents provided to the hearing officer shall be confidential and may not be disclosed, except as otherwise specifically provided.

(h) With regard to any matter properly submitted to the division relating to the determination of valuation of property for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination. With regard to leased commercial and industrial property, the presumption of validity and correctness of such determination shall exist in favor of the county appraiser unless the taxpayer has furnished the county or district appraiser, within 30 calendar days following the informal meeting required by K.S.A. 79-1448, and amendments thereto, or within 30 calendar days following the informal

meeting required by K.S.A. 79-2005, and amendments thereto, a complete income and expense statement for the property for the three years next preceding the year of appeal.

Sec. 12. On July 1, 2013, K.S.A. 2012 Supp. 79-306e is hereby amended to read as follows: 79-306e. (a) The value for property tax purposes of any ~~vessel~~ watercraft, as defined by ~~K.S.A. 32-1102~~ section 10, and amendments thereto, which is acquired or sold after January 1 and prior to September 1 of any taxable year shall be equal to the value determined therefor pursuant to ~~K.S.A. 79-503a~~ section 10, and amendments thereto, multiplied by: (1) In the case of a sale, a fraction the numerator of which is the number of months, or major portion thereof, such ~~vessel~~ watercraft was owned by the record owner thereof during the taxable year in which such ~~vessel~~ watercraft was sold, and the denominator of which is 12; and (2) in the case of an acquisition, a fraction the numerator of which is the number of months, or major portion thereof, remaining in the taxable year after the date of acquisition by the record owner thereof, and the denominator of which is 12.

(b) On or after July 1, 2007, notice of the acquisition or sale of any such ~~vessel~~ watercraft shall be provided by the record owner thereof to the appropriate county appraiser on or before December 20 of the year of such acquisition or sale. Upon receipt of such notice, and after computation of the value of any such ~~vessel~~ watercraft in accordance with the provision of subsection (a), a notification or revised notification of value shall be mailed to the taxpayer.

(c) ~~Vessels~~ Watercraft acquired after September 1 of a taxable year shall not be

subject to assessment and taxation for such year, except as provided by paragraph (1) of subsection (a).

(d) The provisions of this section shall apply to all taxable years commencing after December 31, ~~2002~~ 2013.

Sec. 13. On July 1, 2013, K.S.A. 2012 Supp. 79-1448 is hereby amended to read as follows: 79-1448. Any taxpayer may complain or appeal to the county appraiser from the classification or appraisal of the taxpayer's property by giving notice to the county appraiser within 30 days subsequent to the date of mailing of the valuation notice required by K.S.A. 79-1460, and amendments thereto, for real property, and on or before May 15 for personal property. The county appraiser or the appraiser's designee shall arrange to hold an informal meeting with the aggrieved taxpayer with reference to the property in question. At such meeting it shall be the duty of the county appraiser or the county appraiser's designee to initiate production of evidence to substantiate the valuation of such property, including the affording to the taxpayer of the opportunity to review the data sheet of comparable sales utilized in the determination of such valuation. In any appeal from the appraisal of leased commercial and industrial property, the county or district appraiser's appraised value shall be presumed to be valid and correct and may only be rebutted by a preponderance of the evidence, unless the property owner furnishes the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal within 30 calendar days following the informal meeting. The county appraiser may extend the time in which the taxpayer

may informally appeal from the classification or appraisal of the taxpayer's property for just and adequate reasons. Except as provided in K.S.A. 79-1404, and amendments thereto, no informal meeting regarding real property shall be scheduled to take place after May 15, nor shall a final determination be given by the appraiser after May 20. Any final determination shall be accompanied by a written explanation of the reasoning upon which such determination is based when such determination is not in favor of the taxpayer. Any taxpayer who is aggrieved by the final determination of the county appraiser may appeal to the hearing officer or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, and such hearing officer, or panel, for just cause shown and recorded, is authorized to change the classification or valuation of specific tracts or individual items of real or personal property in the same manner provided for in K.S.A. 79-1606, and amendments thereto. In lieu of appealing to a hearing officer or panel appointed pursuant to K.S.A. 79-1611, and amendments thereto, any taxpayer aggrieved by the final determination of the county appraiser, except with regard to land devoted to agricultural use, wherein the value of the property, is less than \$2,000,000, as reflected on the valuation notice, or the property constitutes single family residential property, may appeal to the small claims and expedited hearings division of the state court of tax appeals within the time period prescribed by K.S.A. 79-1606, and amendments thereto. Any taxpayer who is aggrieved by the final determination of a hearing officer or panel may appeal to the state court of tax appeals as provided in K.S.A. 79-1609, and amendments thereto. An informal meeting with the county appraiser or the appraiser's designee shall

be a condition precedent to an appeal to the county or district hearing panel.

Sec. 14. On July 1, 2013, K.S.A. 2012 Supp. 79-1609 is hereby amended to read as follows: 79-1609. Any person aggrieved by any order of the hearing officer or panel may appeal to the state court of tax appeals by filing a written notice of appeal, on forms approved by the state court of tax appeals and provided by the county clerk for such purpose, stating the grounds thereof and a description of any comparable property or properties and the appraisal thereof upon which they rely as evidence of inequality of the appraisal of their property, if that be a ground of the appeal, with the state court of tax appeals and by filing a copy thereof with the county clerk within 30 days after the date of the order from which the appeal is taken. A county or district appraiser may appeal to the state court of tax appeals from any order of the hearing officer or panel. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination ~~except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination. With regard to leased commercial and industrial property, the presumption of validity and~~

correctness of such determination shall exist in favor of the county or district appraiser unless, within 30 calendar days following the informal meeting required by K.S.A. 79-1448, and amendments thereto, the taxpayer furnished to the county or district appraiser complete income and expense statements for the property for the three years next preceding the year of appeal.

Sec. 15. On July 1, 2013, K.S.A. 2012 Supp. 79-1701a is hereby amended to read as follows: 79-1701a. Any taxpayer, the county appraiser or the county clerk shall, on their own motion, request the board of county commissioners to order the correction of the clerical errors in the appraisal, assessment or tax rolls as described in K.S.A. 79-1701, and amendments thereto. The board of county commissioners of the several counties are hereby authorized to order the correction of clerical errors, specified in K.S.A. 79-1701, and amendments thereto, in the appraisal, assessment or tax rolls for the current year and the immediately preceding two years during the period on and after November 1 of each year. If a county treasurer has collected and distributed the property taxes of a taxpayer and it shall thereafter be determined that the tax computed and paid was based on an erroneous assessment due to a clerical error which resulted in an overpayment of taxes by the taxpayer, and such error is corrected under the provisions hereof then the county commissioners may direct a refund in the amount of the overpayment plus interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, plus two percentage points, per annum, from the date of payment from tax moneys collected during the current year and approve a claim therefor. If all or any

portion of the taxes on such property remain unpaid, the board of county commissioners shall cancel that portion of such unpaid taxes which were assessed on the basis of the error which is being corrected. In lieu of taking such a refund the taxpayer may, at the taxpayer's option, be allowed a credit on the current year's taxes in the amount of the overpayment plus interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, from the date of payment for the previous year. In the event the error results in an understatement of value or taxes as a result of ~~a mathematical miscalculation on the part of the county,~~ the correction of the clerical errors listed in subsection (a), (c), (f) or (g) of K.S.A. 79-1701, and amendments thereto, and the board of county commissioners of the several counties are hereby authorized to correct such error and order an additional assessment or tax bill, or both, to be issued, except that, in no such case shall the taxpayer be assessed interest or penalties on any tax which may be assessed. If such error applies to property which has been sold or otherwise transferred subsequent to the time the error was made, no such additional assessment or tax bill shall be issued.

Sec. 16. On July 1, 2013, K.S.A. 2012 Supp. 79-1702 is hereby amended to read as follows: 79-1702. If any taxpayer, municipality or taxing district shall have a grievance described under the provisions of K.S.A. 79-1701 or 79-1701a, and amendments thereto, which is not remediable thereunder solely because not reported within the time prescribed therein, or which was remediable thereunder and reported to the proper official or officials within the time prescribed but which has not been remedied by such official or officials, such grievance may be presented to the state court of tax

appeals and if it shall be satisfied from competent evidence produced that there is a real grievance, it may direct that the same be remedied either by canceling the tax, if uncollected, together with all penalties charged thereon, or if the tax has been paid, by ordering a refund of the amount found to have been unlawfully charged and collected and interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, minus two percentage points.

In all cases where the identical property owned by any taxpayer has been assessed for the current tax year in more than one county in the state, the court is hereby given authority to determine which county is entitled to the assessment of the property and to charge legal taxes thereon, and if the taxes have been paid in a county not entitled thereto, the court is hereby empowered to direct the authorities of the county which has so unlawfully collected the taxes to refund the same to the taxpayer with all penalties charged thereon.

No tax grievance shall be considered by the state court of tax appeals unless the same is filed within four years from the date the tax would have become a lien on real estate.

In all cases where an error results in an understatement of values or taxes as a result of ~~a mathematical miscalculation on the part of a county~~ the correction of the clerical errors listed in subsection (a), (c), (f) or (g) of K.S.A. 79-1701, and amendments thereto, the state court of tax appeals, if it shall be satisfied from competent evidence produced that there is an understatement as a result of a clerical error, may order an

additional assessment or tax bill, or both, to be issued so that the proper value of the property in question is reflected, except that, in no such case shall the taxpayer be assessed interest or penalties on any tax which may be assessed. No increase shall be ordered to correct such error that extends back more than two years from the date of the most recent tax year. If such error applies to property which has been sold or otherwise transferred subsequent to the time the error was made, no such additional assessment or tax bill shall be issued.

Errors committed in the valuation and assessment process that are not specifically described in K.S.A. 79-1701, and amendments thereto, shall be remediable only under the provisions of K.S.A. 79-2005, and amendments thereto.

Sec. 17. On July 1, 2013, K.S.A. 2012 Supp. 79-2005 is hereby amended to read as follows: 79-2005. (a) Any taxpayer, before protesting the payment of such taxpayer's taxes, shall be required, either at the time of paying such taxes, or, if the whole or part of the taxes are paid prior to December 20, no later than December 20, or, with respect to taxes paid in whole or in part in an amount equal to at least $\frac{1}{2}$ of such taxes on or before December 20 by an escrow or tax service agent, no later than January 31 of the next year, to file a written statement with the county treasurer, on forms approved by the state court of tax appeals and provided by the county treasurer, clearly stating the grounds on which the whole or any part of such taxes are protested and citing any law, statute or facts on which such taxpayer relies in protesting the whole or any part of such taxes. When the grounds of such protest is an assessment of taxes made pursuant to K.S.A. 79-332a and

79-1427a, and amendments thereto, the county treasurer may not distribute the taxes paid under protest until such time as the appeal is final. When the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the county treasurer shall forward a copy of the written statement of protest to the county appraiser who shall within 15 days of the receipt thereof, schedule an informal meeting with the taxpayer or such taxpayer's agent or attorney with reference to the property in question. The county appraiser shall review the appraisal of the taxpayer's property with the taxpayer or such taxpayer's agent or attorney and may change the valuation of the taxpayer's property, if in the county appraiser's opinion a change in the valuation of the taxpayer's property is required to assure that the taxpayer's property is valued according to law, and shall, within 15 business days thereof, notify the taxpayer in the event the valuation of the taxpayer's property is changed, in writing of the results of the meeting. In the event the valuation of the taxpayer's property is changed and such change requires a refund of taxes and interest thereon, the county treasurer shall process the refund in the manner provided by subsection (l).

(b) No protest appealing the valuation or assessment of property shall be filed pertaining to any year's valuation or assessment when an appeal of such valuation or assessment was commenced pursuant to K.S.A. 79-1448, and amendments thereto, nor shall the second half payment of taxes be protested when the first half payment of taxes has been protested. Notwithstanding the foregoing, this provision shall not prevent any subsequent owner from protesting taxes levied for the year in which such property was

acquired, nor shall it prevent any taxpayer from protesting taxes when the valuation or assessment of such taxpayer's property has been changed pursuant to an order of the director of property valuation.

(c) A protest shall not be necessary to protect the right to a refund of taxes in the event a refund is required because the final resolution of an appeal commenced pursuant to K.S.A. 79-1448, and amendments thereto, occurs after the final date prescribed for the protest of taxes.

(d) If the grounds of such protest shall be that the valuation or assessment of the property upon which the taxes so protested are levied is illegal or void, such statement shall further state the exact amount of valuation or assessment which the taxpayer admits to be valid and the exact portion of such taxes which is being protested.

(e) If the grounds of such protest shall be that any tax levy, or any part thereof, is illegal, such statement shall further state the exact portion of such tax which is being protested.

(f) Upon the filing of a written statement of protest, the grounds of which shall be that any tax levied, or any part thereof, is illegal, the county treasurer shall mail a copy of such written statement of protest to the state court of tax appeals and the governing body of the taxing district making the levy being protested.

(g) Within 30 days after notification of the results of the informal meeting with the county appraiser pursuant to subsection (a), the protesting taxpayer may, if aggrieved by the results of the informal meeting with the county appraiser, appeal such results to the

state court of tax appeals.

(h) After examination of the copy of the written statement of protest and a copy of the written notification of the results of the informal meeting with the county appraiser in cases where the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the court shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act, unless waived by the interested parties in writing. If the grounds of such protest is that the valuation or assessment of the property is illegal or void the court shall notify the county appraiser thereof.

(i) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the court. With regard to any matter properly submitted to the court relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination except that no such duty shall accrue to the county or district appraiser with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the

county appraiser with respect to the validity and correctness of such determination. In all instances where the court sets a request for hearing and requires the representation of the county by its attorney or counselor at such hearing, the county shall be represented by its county attorney or counselor.

(j) When a determination is made as to the merits of the tax protest, the court shall render and serve its order thereon. The county treasurer shall notify all affected taxing districts of the amount by which tax revenues will be reduced as a result of a refund.

(k) If a protesting taxpayer fails to file a copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the court within the time limit prescribed, such protest shall become null and void and of no effect whatsoever.

(l) (1) In the event the court orders that a refund be made pursuant to this section or the provisions of K.S.A. 79-1609, and amendments thereto, or a court of competent jurisdiction orders that a refund be made, and no appeal is taken from such order, or in the event a change in valuation which results in a refund pursuant to subsection (a), the county treasurer shall, as soon thereafter as reasonably practicable, refund to the taxpayer such protested taxes and, with respect to protests or appeals commenced after the effective date of this act, interest computed at the rate prescribed by K.S.A. 79-2968, and amendments thereto, minus two percentage points, per annum from the date of payment of such taxes from tax moneys collected but not distributed. Upon

making such refund, the county treasurer shall charge the fund or funds having received such protested taxes, except that, with respect to that portion of any such refund attributable to interest the county treasurer shall charge the county general fund. In the event that the state court of tax appeals or a court of competent jurisdiction finds that any time delay in making its decision is unreasonable and is attributable to the taxpayer, it may order that no interest or only a portion thereof be added to such refund of taxes.

(2) No interest shall be allowed pursuant to paragraph (1) in any case where the tax paid under protest was inclusive of delinquent taxes.

(m) Whenever, by reason of the refund of taxes previously received or the reduction of taxes levied but not received as a result of decreases in assessed valuation, it will be impossible to pay for imperative functions for the current budget year, the governing body of the taxing district affected may issue no-fund warrants in the amount necessary. Such warrants shall conform to the requirements prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by such section and may be issued without the approval of the state court of tax appeals. The governing body of such taxing district shall make a tax levy at the time fixed for the certification of tax levies to the county clerk next following the issuance of such warrants sufficient to pay such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized by law.

(n) Whenever a taxpayer appeals to the court of tax appeals pursuant to the provisions of K.S.A. 79-1609, and amendments thereto, or pays taxes under protest

related to one property whereby the assessed valuation of such property exceeds 5% of the total county assessed valuation of all property located within such county and the taxpayer receives a refund of such taxes paid under protest or a refund made pursuant to the provisions of K.S.A. 79-1609, and amendments thereto, the county treasurer or the governing body of any taxing subdivision within a county may request the pooled money investment board to make a loan to such county or taxing subdivision as provided in this section. The pooled money investment board is authorized and directed to loan to such county or taxing subdivision sufficient funds to enable the county or taxing subdivision to refund such taxes to the taxpayer. The pooled money investment board is authorized and directed to use any moneys in the operating accounts, investment accounts or other investments of the state of Kansas to provide the funds for such loan. Each loan shall bear interest at a rate equal to the net earnings rate of the pooled money investment portfolio at the time of the making of such loan. The total aggregate amount of loans under this program shall not exceed \$50,000,000 of unencumbered funds pursuant to article 42 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto. Such loan shall not be deemed to be an indebtedness or debt of the state of Kansas within the meaning of section 6 of article 11 of the constitution of the state of Kansas. Upon certification to the pooled money investment board by the county treasurer or governing body of the amount of each loan authorized pursuant to this subsection, the pooled money investment board shall transfer each such amount certified by the county treasurer or governing body from the state bank account or accounts prescribed in this subsection to the county treasurer

who shall deposit such amount in the county treasury. Any such loan authorized pursuant to this subsection shall be repaid within four years. The county or taxing subdivision shall make not more than four equal annual tax levies at the time fixed for the certification of tax levies to the county clerk following the making of such loan sufficient to pay such loan within the time period required under such loan. All such tax levies shall be in addition to all other levies authorized by law.

(o) The county treasurer shall disburse to the proper funds all portions of taxes paid under protest and shall maintain a record of all portions of such taxes which are so protested and shall notify the governing body of the taxing district levying such taxes thereof and the director of accounts and reports if any tax protested was levied by the state.

(p) This statute shall not apply to the valuation and assessment of property assessed by the director of property valuation and it shall not be necessary for any owner of state assessed property, who has an appeal pending before the state court of tax appeals, to protest the payment of taxes under this statute solely for the purpose of protecting the right to a refund of taxes paid under protest should that owner be successful in that appeal.

Sec. 18. On July 1, 2013, K.S.A. 2012 Supp. 79-3702 is hereby amended to read as follows: 79-3702. For the purposes of this act: (a) "Purchase price" means the consideration paid or given or contracted to be paid or given by any person to the seller of an article of tangible personal property for the article purchased. The term shall

include, in addition to the consideration paid or given or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using the same in this state. If a cash discount is allowed and taken on the sale it shall be deducted in arriving at the purchase price.

(b) The meaning ascribed to words and phrases in K.S.A. 79-3602, and amendments thereto, insofar as is practicable, shall be applicable herein unless otherwise provided. The provisions of K.S.A. 79-3601 to 79-3625, inclusive, 79-3650, K.S.A. 2012 Supp. 79-3693 and 79-3694, and amendments thereto, relating to enforcement, collection and administration, insofar as practicable, shall have full force and effect with respect to taxes imposed under the provisions of this act.

(c) "Use" means the exercise within this state by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of the property in the regular course of business, and except storage as hereinafter defined.

(d) "Storage" means any keeping or retaining in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(e) "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into,

attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

(f) "Property used in processing" means: (1) Any tangible personal property which, when used in fabrication, compounding, manufacturing or germination, becomes an integral part of the new article resulting from such fabrication, compounding, manufacturing, or germination, and intended to be sold ultimately at retail; and (2) fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

(g) "Retailer" means every person engaged in the business of selling tangible personal property for use within the meaning of this act, except that, when in the opinion of the director it is necessary for the efficient administration of this act to regard any salesperson, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this act.

(h) (1) "Retailer doing business in this state" or any like term, means: (A) Any retailer ~~having~~ or maintaining in this state, permanently, temporarily, directly or indirectly through a subsidiary, agent or representative, an office, distribution house, sales house, warehouse or other place of business;

(B) any retailer ~~having~~ utilizing an employee, independent contractor, agent, representative, salesperson, canvasser ~~or~~ solicitor or other person operating in this state either permanently or temporarily, ~~under the authority of the retailer or its subsidiary~~, for the purpose of selling, delivering, installing, assembling, servicing, repairing, soliciting sales or the taking of orders for tangible personal property;

(C) any retailer, including a contractor, repair person or other service provider, who enters this state to perform services that are enumerated in K.S.A. 79-3603, and amendments thereto, and who is required to secure a retailer's sales tax registration certificate before performing those services;

(D) any retailer deriving rental receipts from a lease of tangible personal property situated in this state;

(E) ~~any person having a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers' sales tax act;~~

~~(F)~~—any person regularly maintaining a stock of tangible personal property in this state for sale in the normal course of business; and

~~(G)~~(F) any retailer who has any other contact with this state that would allow this state to require the retailer to collect and remit tax under the provisions of the constitution and laws of the United States.

(2) A retailer shall be presumed to be doing business in this state if any of the following occur:

~~(A) Both of the following conditions exist:~~

~~(i) The retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a retailer maintaining a sales location in Kansas; and~~

~~(ii) the retailer sells the same or a substantially similar line of products as the related Kansas retailer and does so under the same or a substantially similar business name, or the Kansas facilities or Kansas employees of the related Kansas retailer are used to advertise, promote or facilitate sales by the retailer to consumers.~~

~~(B) The retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a business that maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers property sold by the retailer to consumers.~~

~~(C) For purposes of paragraphs (A) and (B):~~

~~(i) "Substantial ownership interest" means an interest in an entity that is not less than the degree of ownership of equity interest in an entity that is specified by Section 78p of Title 15 of the United States Code, or any successor to that statute, with respect to a person other than a director or officer; and~~

~~(ii) "ownership" means and includes both direct ownership, and indirect ownership through a parent, subsidiary or affiliate. Any person, other than a common carrier acting in its capacity as such, that has nexus with the state sufficient to require such person to collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal~~

property or services in this state:

(i) Sells the same or a substantially similar line of products as the retailer and does so under the same or a substantially similar business name;

(ii) maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers or facilitates the sale or delivery of property sold by the retailer to consumers;

(iii) uses trademarks, service marks, or trade names in the state that are the same or substantially similar to those used by the retailer;

(iv) delivers, installs, assembles or performs maintenance services for the retailer's customers within the state;

(v) facilitates the retailer's delivery of property to customers in the state by allowing the retailer's customers to pick up property sold by the retailer at an office, distribution facility, warehouse, storage place or similar place of business maintained by the person in the state;

(vi) has a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers' sales tax act; or

(vii) conducts any other activities in the state that are significantly associated with the retailer's ability to establish and maintain a market in the state for the retailer's sales.

(B) Any affiliated person conducting activities in this state described in subparagraph (A) or (C) has nexus with this state sufficient to require such person to

collect and remit taxes under the provisions of the constitution and laws of the United States if such person were making taxable retail sales of tangible personal property or services in this state.

(C) The retailer enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link or an internet website, by telemarketing, by an in-person oral presentation, or otherwise, to the retailer, if the cumulative gross receipts from sales by the retailer to customers in the state who are referred to the retailer by all residents with this type of an agreement with the retailer is in excess of \$10,000 during the preceding 12 months. This presumption may be rebutted by submitting proof that the residents with whom the retailer has an agreement did not engage in any activity within the state that was significantly associated with the retailer's ability to establish or maintain the retailer's market in the state during the preceding 12 months. Such proof may consist of sworn written statements from all of the residents with whom the retailer has an agreement stating that they did not engage in any solicitation in the state on behalf of the retailer during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect 90 days after the enactment of this statute and shall apply to sales made and uses occurring on or after the effective date of this subparagraph and without regard to the date the retailer and the resident entered into the agreement described in this subparagraph. The term "preceding 12 months" as used in this subparagraph includes the 12 months commencing prior to the effective date

of this subparagraph.

(D) The presumptions in subparagraphs (A) and (B) may be rebutted by demonstrating that the activities of the person or affiliated person in the state are not significantly associated with the retailer's ability to establish or maintain a market in this state for the retailer's sales.

(3) The processing of orders electronically, by fax, telephone, the internet or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is doing business in this state pursuant to this section.

(i) "Director" means the director of taxation.

(j) As used in this section, "affiliated person" means any person that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code as the retailer or any other entity that, notwithstanding its form of organization, bears the same ownership relationship to the retailer as a corporation that is a member of the same "controlled group of corporations" as defined in section 1563(a) of the federal internal revenue code."

And by renumbering sections accordingly;

Also on page 20, in line 39, after "Supp." by inserting "74-2433f,"; also in line 39, by striking "is" and inserting ", 79-306e, 79-1448, 79-1609, 79-1701a, 79-1702, 79-2005 and 79-3702 are";

On page 1, in the title, in line 3, after "sales" by inserting "and use"; also in line 3,

after the second "tax" by inserting ", nexus"; also in line 3, before "amending" by inserting "property tax, exemptions, watercraft, appraisals, payment of refund of taxes;"; also in line 3, after "Supp." by inserting "74-2433f,"; in line 4, after "5162," by inserting "79-306e, 79-1448, 79-1609, 79-1701a, 79-1702, 79-2005,"; also in line 4, after "79-3620" by inserting ", 79-3702";

And your committee on conference recommends the adoption of this report.

Conferees on part of House

Conferees on part of Senate