Tax Provisions—Property Tax on Machinery and Equipment; Motor Vehicle Tax Clarification; Mortgage Registration Tax Repeal; Income Tax Penalties; ROZ Program; HB 2643

HB 2643 makes a number of amendments to property tax, motor vehicle tax, and mortgage registration tax provisions. The bill also makes a change to an income tax penalty provision and expands the "rural opportunity zone" (ROZ) program.

Property Tax Provisions

One section of the bill retroactively clarifies legislative intent from 2006 (when a property tax exemption for certain commercial and industrial machinery and equipment was enacted) by determining the circumstances under which property may be classified as personal property or real property. In making the classification determination, county appraisers are required to conform to the definitions of real and personal property provided elsewhere in Kansas law.

Where the classification of property may not be otherwise clearly determined, appraisers are required to utilize a three-part, fixture-law test (generally involving annexation, adaption, and intention) in determining its classification as real or personal.

Additional language clarifies that the basic factors in determining whether items are to be classified as real or personal will be their designated use and purpose, that such determination is to be made on a case-by-case basis, and that all three parts of the three-part fixture test must be satisfied for an item to be classified as real property.

Another set of provisions stipulates that after July 1, 2014, owners of property constructed or purchased with the proceeds of industrial revenue bonds (IRBs) and exempt from property tax will be required to notify county appraisers within 30 days of the completion of improvements on the projects, and the county appraiser subsequently is required to classify the improvements as real or personal property. Owners aggrieved with the classification determination may appeal to the Court of Tax Appeals; the bill authorizes the Court to adopt rules and regulations necessary to implement this. Property classified pursuant to this process may not be reclassified within two years after the expiration of the exemption absent the approval of the Court of Tax Appeals or determination of a material physical change to the property, a material change in the use of the property, or a substantial change in directly applicable law. A statute relating to the IRB exemption also is amended to clarify that any listing of property at the time of the exemption application process will not constitute an official classification for property tax purposes.

Taxpayers or county appraisers are authorized to request that the Property Valuation Division (PVD) of the Department of Revenue contract with independent appraisers to classify and appraise certain "complex" properties. PVD is required to contract with qualified appraisers who are certified real property appraisers with at least three years of experience in classifying and appraising complex properties. Counties are responsible for paying all reasonable costs of the independent classifications and appraisals, regardless of which party made the request. Final determinations made by independent appraisers are deemed admissible before the courts and the Court of Tax Appeals in any subsequent proceedings. PVD is allowed to require county appraisers and taxpayers to submit relevant documentation to the independent appraisers. The bill requires the Secretary of Revenue to adopt rules and regulations necessary to administer the provisions by January 1, 2015.

A further section defines for property tax purposes beginning in tax year 2014 commercial and industrial machinery and equipment to include such property used directly in the manufacture of cement, lime or similar products. Property that is eligible includes kilns, pumps, lifts, process fans, bucket elevators, compressors, raw mills, hammer mills, grinders, conveyors, ball mills, mixers, storage tanks, scales, crushers, reclaimers, processing vessels, filters, electric motors, cement and clinker coolers, finish mills, separators, electric hoists, stackers, roller mills, clinker breakers, hydraulic and lubricating systems used directly in manufacturing and processing activities, analyzers, aeration systems, air pollution control equipment, bulk loading systems, material and gas flow distribution gates, and handling and transport systems. Any such property valued and assessed as public utility property will not qualify for the statutory designation as commercial and industrial machinery and equipment.

Motor Vehicle Tax Provision

An additional provision clarifies that a motor vehicle tax exemption involving up to two vehicles owned by certain members of the military includes those full-time members stationed in Kansas who are active guard or reservists under either Title 10 or Title 32 of the *United States Code*.

Mortgage Registration Tax Provisions

The mortgage registration tax is phased out over five years, while additional fees collected by county registers of deeds are phased in over four years.

The mortgage registration tax, which has been levied at the rate of 0.26 percent of the principal debt or obligation secured by mortgages, is reduced to 0.2 percent for all mortgages received and filed for record during calendar year 2015; 0.15 percent during calendar year 2016; 0.1 percent during calendar year 2017; and 0.05 percent during calendar year 2018. The tax is repealed altogether beginning in 2019.

Prior law provided that 25/26ths of the revenue be retained by counties, with 1/26th coming to the state for deposit in the Heritage Trust Fund. The bill repeals the requirement that any mortgage registration tax receipts be distributed to the Heritage Trust Fund on and after January 1, 2015.

A number of statutory fees charged pursuant to KSA 2013 Supp. 28-115 relative to documents filed with county registers of deeds are increased from 2015 through 2018 (but are not increased for a final time in 2019 when the mortgage registration tax rate is reduced for the final time).

The fee increases are as follows:

	Prior Law	CY 2015	CY 2016	CY 2017	CY 2018 and thereafter
First page of deeds, mortgages, other instruments	$ 6.00	$ 8.00	$ 11.00	$ 14.00	$ 17.00
Each additional page of such documents	2.00	4.00	7.00	10.00	13.00
Recording town plats per page	20.00	22.00	25.00	28.00	31.00
Release/assignment of mortgages	5.00	7.00	10.00	13.00	16.00
Certifying instruments on record	1.00	3.00	6.00	9.00	12.00
Signature acknowledgment	0.50	2.50	5.50	8.50	11.50
IRS tax lien filing notices	5.00	7.00	10.00	13.00	16.00
IRS/KDOR lien release notices	5.00	7.00	10.00	13.00	16.00
Liens for materials/services under KSA 58-201	5.00	7.00	10.00	13.00	16.00

Relative to these aforementioned fees, a new cap applies beginning in calendar year 2015 such that a maximum of $125 may be levied for recording mortgages of $75,000 or less involving single-family principal residences.

In addition to the foregoing fee increases, an additional fee of $1 is levied beginning in calendar year 2015 and credited to the Heritage Trust Fund on the first and all subsequent pages of any deeds, mortgages, and other instruments and on release or assignments of mortgages. An annual statutory cap of $100,000 on Heritage Trust Fund mortgage registration tax distributions from any given county is replaced with a new cap of $30,000 from any given county relative to this new $1 replacement fee.

An existing separate fee of $2 per page is increased to $3 per page beginning in calendar year 2015, and receipts from this additional $1 fee are to be split into two separate $0.50 portions and deposited in the County Clerk Technology Fund (CCTF) and the County Treasurer Technology Fund (CTTF), which are new funds created by the bill for each county. Moneys up to $50,000 in each county deposited in the CCTF and the CTTF are required to be used by county clerks and county treasurers to acquire equipment and technological services for the storing, recording, archiving, retrieving, maintaining and handling of certain data. County commissions are authorized to divert amounts in excess of $50,000 in each county for technological needs of other county offices upon the finding of county clerks or treasurers that such amounts exceed the technological needs of those offices.

Income Tax Provision

Another part of the bill exempts from a 50 percent underpayment of liability penalty provided under prior law certain income taxpayers who timely pay (generally within 30 days) any tax assessed pursuant to adjustments made by the Director of Taxation. In order to qualify for this exemption, taxpayers must have previously paid in full the amount of tax due as stated on the original returns.

ROZ Program

Four additional counties are added to the ROZ program pursuant to KSA 2013 Supp. 24-50,222, bringing the total number of designated counties to 77. The additional counties are Cherokee, Labette, Montgomery, and Sumner.

Severability Clause

A severability clause stipulates that if a portion of the bill were to be held invalid, such invalidity will not affect other provisions of the act.

Fiscal Impact

Fiscal effects associated with the property tax and motor vehicle tax provisions remain unknown.

The income tax penalty provision is expected to reduce State General Fund (SGF) receipts by $0.5 million annually.

The ROZ expansion provision is expected to reduce SGF receipts by $0.8 million in FY 2015 and $2.5 million in FY 2016 and thereafter.

According to the PVD, mortgage registration tax receipts in CY 2013 were $47.079 million. Of this amount, $45.269 million was retained by counties, while $1.810 million was collected for the Heritage Trust Fund. But an estimated $0.719 million of Heritage Trust Fund collections was retained in several counties pursuant to a statutory cap of $0.1 million on such distributions from any given county. Estimated Heritage Trust Fund distributions in CY 2013 therefore were $1.092 million.

The phased reduction in the county's share of the tax is expected to equate to a loss of $9.054 million in CY 2015, $18.108 million in CY 2016, $27.161 million in CY 2017, $36.215 million in CY 2018, and $45.269 million in CY 2019 and thereafter.

Based on additional data obtained from PVD, the higher county-retained fees levied pursuant to KSA 2013 Supp. 28-115, absent the new cap for certain mortgages of $75,000 or less, will increase revenues by $4.450 million in CY 2015; $11.124 million in CY 2016; $17.799 million in CY 2017; and, when fully phased in, $24.473 million in CY 2018. (The actual increase in such fees is expected to be below these amounts, which have not been adjusted to account for the $125 cap provision applicable to certain mortgages.)

The additional $1 fee earmarked for the CCTF and the CTTF will provide $2.225 million beginning in CY 2015 ($1.1125 million to each fund).

The additional $1 increase in selected fees for the Heritage Trust Fund also is expected to increase fees by $2.225 million beginning in CY 2015. Because of changes in the cap provision, the Heritage Trust Fund will receive an estimated $1.166 million of that amount, with various counties retaining the balance.