

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2313**

As Recommended by Senate Committee on
Assessment and Taxation

Brief*

Senate Sub. for HB 2313 would enact the COVID-19 Retail Storefront Property Tax Relief Act, provide for property tax reimbursements in the event of shutdowns or capacity limitations due to disaster emergency declarations, extend the 20-mill statewide school finance levy, expand the motor vehicle property tax exemption for National Guard members, modify *pro tempore* membership provisions for the Board of Tax Appeals (BOTA), and require the Legislative Division of Post Audit to study the impact of governmental and non-profit organizations competing with for-profit businesses.

COVID-19 Retail Storefront Property Tax Relief Act

The bill would enact the Retail Storefront Property Tax Relief Act (Act) to provide for claims for refunds to be paid for tax years 2020 and 2021 for certain claimants that were operationally shut down or restricted at their retail storefront by a COVID-19-related order or action imposed by the State, a local unit of government, or a local health officer.

Refund Amounts

The refund would be equal to 33 percent of the sum of the COVID-19 ordered shutdown days gross rebate amount and the COVID-19 ordered restricted operations days gross

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

rebate amount, as those terms are defined by the bill. Refunds would be limited to \$7,500 per tax year.

The COVID-19 ordered shutdown days gross rebate amount would be the amount of property taxes accrued or 15 percent of gross rent actually paid in cash for the tax year, divided by 3 for businesses shutdown for 91 or more days, divided by 4 for businesses shutdown for 61 to 90 days, divided by 6 for businesses shutdown for 31 to 60 days, and divided by 12 for businesses shutdown for 1 to 30 days.

The COVID-19 ordered restricted operations days gross rebate amount would be the amount of property taxes accrued or 15 percent of gross rent actually paid in cash for the tax year, divided an amount ranging from 2 to 16, depending on the number of ordered restricted operation days.

Eligible Claimants

Claimants would be required to be for-profit businesses in operation as of July 1, 2019, and March 1, 2020, and filing a 2019 tax return with annual revenues between \$10,000 and \$2,500,000 in 2019, with less gross revenue in 2020 or 2021 than in 2019. Businesses would not be permitted to be claimants if they received more than a total of \$150,000 in prior COVID-19-related local, state, or federal funding, or any combination thereof.

Claimants would not be permitted to be grocery stores, pharmacies, hardware stores or home improvement businesses, retail liquor stores, manufacturers and food processors, schools from pre-kindergarten through post-secondary, hospitals and healthcare providers (not including dentists), property management and real estate services, professional services, agricultural and aquaculture producers, hosts or operators of vacation or short-term rental units, passive businesses, financial businesses primarily engaged in the business of lending, cable companies, telephone

companies, utilities, and energy production, generation, and distribution companies.

Only one claimant per retail storefront would be permitted to receive a refund per tax year. "Retail storefront" would be defined to be real property where the claimant conducts retail sales through customers' physical, on-site presence and may consist as part of a multi-purpose or multi-retail storefront building.

Additional Provisions

The Act would require claims to be filed with the Department of Revenue on or before April 15, 2022, in order to be paid or allowed. The Act would direct the Director of Taxation to make available suitable forms for filing claims and would authorize the Secretary of Revenue to adopt rules and regulations necessary for the administration of the Act.

The Act would require claimants to provide reasonable proof of eligibility for a refund to the Director of Taxation, including information concerning taxes levied and rent paid. The Act would permit the amount of any claim to be applied to outstanding tax liability owed by the claimant and would require a refund amount to be paid to a county treasurer to be applied to property taxes owed in the event a claimant has delinquent property taxes for tax year 2020 or 2021. Delinquent property taxes for any tax year prior to 2020 would disallow a claimant from being eligible for a refund.

The Act would provide for the disallowance of any claims filed with fraudulent intent or upon a finding that the claimant received title to the retail storefront for the purpose of applying for a refund. Filing a claim with fraudulent intent would be a class B misdemeanor and any claim paid upon a fraudulent filing would bear interest at a rate of 1 percent per month until the claim was repaid or recovered.

The provisions of the Act would be subject to informal conference and appeals to the State Board of Tax Appeals.

Each county would be required to pay the State an amount equal to 33 percent of the amount of refund claims paid pursuant to the Act for property located in such county.

Disaster Emergency Declarations Property Tax Reimbursements

Beginning January 1, 2022, the bill would provide for reimbursements from the county general fund to the owner of any building maintaining a business on the property that was shut down or limited in any capacity pursuant to a declared disaster emergency. The reimbursement would be 1/365 of the amount of taxes levied for every day the business is shutdown and 1/365 the amount of taxes levied multiplied by the percentage capacity limitation for every day the business is required to operate at a limited capacity.

If the State or any political subdivision of the State, other than the county, issued the order shutting down or limiting the capacity of the business, such governmental entity would be required to reimburse the county for the cost of the reimbursement.

If the business on the property is not operated by the owner of the property, the property owner and the business operator would each be entitled to 50 percent of the reimbursement. The business operator would be permitted to assign the operator's share to the property owner as credit against any delinquent rent owed to the property owner.

Statewide School Finance Tax Levy

The bill would re-authorize the 20-mill property tax levy for school years 2021-2022 and 2022-2023.

The bill would continue the exemption of residential property up to \$20,000 of its appraised valuation from the 20-mill property tax levy for taxable years 2021 and 2022.

National Guard Motor Vehicle Property Tax Exemption

The bill would extend a vehicle property tax exemption for up to two motor vehicles to all current members in good standing of the Kansas Army National Guard, Kansas Air National Guard, or U.S. military reserve forces stationed in Kansas, beginning in tax year 2022. Under current law, members of the Kansas Army National Guard, Kansas Air National Guard, or Kansas reserve forces of the U.S. military receive the exemption only when stationed or assigned in Kansas under authority of Title 10 or 32 of the U.S. Code.

Board of Tax Appeals Pro Tempore Membership

The bill would provide that a *pro tempore* member of BOTA may be appointed when there is any vacancy on the Board. Current law requires two vacancies prior to the appointment of a *pro tempore* member.

Legislative Division of Post Audit Study

The bill would require the Legislative Post Audit Committee to direct the Legislative Division of Post Audit to conduct a study of the impact of non-profit organizations and governmental entities competing against for-profit businesses during calendar year 2021 and submit a final study report to the Legislature on or before January 15, 2022.

Background

The bill was introduced by the House Committee on Veterans and Military at the request of the Enlisted Association of the National Guard of Kansas and referred to the House Committee on Taxation.

HB 2313

House Committee on Taxation

In the House Committee hearing, **proponent** testimony was provided by a representative of the Enlisted Association of the National Guard of Kansas, who stated it is unfair to provide active duty military or guard reserve members with an exemption while excluding other Kansas airmen and soldiers, given that all of them help protect Kansas.

No other testimony was provided.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by two representatives of the Enlisted Association of the National Guard of Kansas, who stated the exemption is most appropriately provided to all current National Guard members.

No other testimony was provided.

The Senate Committee amended the bill to include the COVID-19 Retail Storefront Property Tax Relief Act and provisions related to disaster emergency declarations property tax reimbursements (similar to provisions in SB 149), the statewide school finance tax levy (SB 277), BOTA *pro tempore* membership, and the Legislative Division of Post Audit.

SB 149

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of Representative Corbet.

Senate Committee on Assessment and Taxation

At the Senate Committee hearing on the bill, **proponent** testimony was provided by representatives of the Kansas Chamber of Commerce and the Kansas Restaurant and Hospitality Association. Written-only **proponent** testimony was provided by Representative Corbet and a private citizen. Proponents stated the bill would reimburse business owners for property taxes attributable to times when the businesses were shutdown due to governmental orders.

Opponent testimony was provided by a representative of the Kansas Association of Counties. Written-only **opponent** testimony was provided by a representative of the Kansas Legislative Policy Group. Opponents stated the bill would place an undue burden on county budgets.

Written-only neutral testimony was provided by a representative of the League of Kansas Municipalities.

SB 277

The bill was introduced by the Senate Committee on Ways and Means at the request of Senator McGinn.

Senate Committee on Assessment and Taxation

At the Senate Committee hearing on the bill, **proponents** included Representative Jennings and representatives of United School Administrators of Kansas, USD 204 Bonner Springs, USD 252 Southern Lyon County, and USD 232 De Soto. Written-only **proponent** testimony

was provided by representatives of the Kansas Association of School Boards and the Kansas State Board of Education. Proponents stated the statewide mill levy was necessary to finance schools and also requested certain date changes related to SB 13.

Neutral testimony was provided by a representative of the League of Kansas Municipalities.

Fiscal Information

COVID-19 Retail Storefront Property Tax Relief Act

According to information provided by the Department of Revenue on April 27, 2021, claims associated with the Act are anticipated to total \$44.3 million for tax year 2020, with the State General Fund being responsible for \$29.7 million and county governments being responsible for \$14.6 million. For tax year 2021, claims are anticipated to total \$24.8 million, with the SGF being responsible for \$16.6 million and county governments being responsible for \$8.2 million.

Disaster Emergency Declarations Property Tax Reimbursements

According to information provided by the Department of Revenue on April 27, 2021, the Department is unable to estimate the impact of future emergency declarations.

Statewide School Finance Mill Levy

According to the fiscal note prepared by the Division of the Budget on SB 277, revenues from the 20-mill statewide property tax are estimated to be \$752.4 million in FY 2022 and \$770.6 million FY 2023. Enactment of the bill is reflected in *The FY 2022 Governor's Budget Report*.

National Guard Motor Vehicle Property Tax Exemption

According to the fiscal note prepared by the Division of the Budget on HB 2313 as introduced, the Department of Revenue indicates enactment of the bill could reduce state revenues by as much as \$27,288 for FY 2022, with \$18,192 from the Educational Building Fund and \$9,096 from the State Institutions Building Fund, and would also decrease revenues to local governments that levy property tax by an amount not calculated by the Department. The bill would require \$720 for Department administrative costs from the State General Fund for FY 2022. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Taxation; Property Tax; Board of Tax Appeals; National Guard; Motor Vehicle Property Tax; COVID-19; Refunds; Legislative Division of Post Audit