

SESSION OF 2013

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 83**

As Agreed to April 1, 2013

**Brief\***

House Sub. for SB 83 would enact service fees related to delinquent tax liabilities; make adjustments to various income and severance tax provisions enacted in 2012; establish “click-thru” nexus language relating to sales and use tax; provide a property tax exemption for certain new automobile manufacturing property; authorize local units of government under certain circumstances to request state loans to assist with refunding money to property taxpayers; provide several changes relating to property tax valuation and administration; and implement a number of changes in the property tax system for watercraft.

***Service Fee Provisions***

The bill would increase the service fee assessed to set up an installment payment plan for delinquent tax liability in excess of 90 days from \$10 to \$25. It would authorize the Department of Revenue to assess a service fee of \$50 for partial or full abatement requests and withhold \$22 for any funds remitted to the U.S. Internal Revenue Service. All moneys from the fees would be deposited into the Recovery Fund for Enforcement Actions and Attorney Fees, to be used for administration and operational costs.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

### ***Income Tax Provisions***

One part of the 2012 legislation that requires taxpayers who are partners or Subchapter S corporation shareholders to compute a different adjusted basis for their partnership interests or Subchapter S stock for Kansas income tax purposes than they do for federal income tax purposes would be repealed.

An additional section would clarify, for Kansas income tax purposes, the add back to federal adjusted gross income required of certain losses for Subchapter S corporations would not apply to those entities with wholly owned subsidiaries subject to the financial institutions privilege tax.

A number of other provisions are technical in nature and would not change state policy, including clarifying references to certain federal forms and schedules, adjusting provisions relating to itemized deductions and the food sales tax rebate program, and correcting certain statutory references within the Kansas income tax code.

### ***Severance Tax Provisions***

Another section would clarify that the 50-barrel-per-day threshold enacted in 2012, relative to being excluded from the new pool severance tax exemption for oil, would be determined based on the initial six months of production from each well.

### ***Sales Tax “Click-Thru” Nexus Provisions***

Additional sections would implement “click-thru” nexus provisions relating to sales and use taxation. One part would expand the definition of a retailer doing business in this state for purposes of sales and use tax collection to include those retailers and affiliated persons who enter into certain agreements with Kansas residents. Such agreements would include those entered into with one or more residents of

Kansas under which the resident, in exchange for some consideration, directly or indirectly refers potential customers from Kansas so long as the cumulative gross receipts stemming from transactions generated by such references exceed \$10,000 during the preceding 12 months. The bill also would create provisions of law by which retailers could submit proof they do not meet the requirements established in the expanded definition.

Other language in the bill would provide that any vendor selling or leasing tangible personal property to the state be required to register as a retailer for Kansas sales tax purposes; and that any ruling, agreement, or contract between a retailer and the State of Kansas executive branch concerning a sales and use tax exemption, despite the presence of a warehouse or distribution center, be null and void unless specifically approved by each chamber of the Legislature.

#### ***Property Tax Exemption – Auto Manufacturing***

The bill further would provide a property tax exemption retroactive to tax year 2012 for all new automobile manufacturing property, defined generally to mean all real property purchased or constructed after December 31, 2011, by qualifying automobile manufacturers. The exemption would apply only for a period of ten calendar years, and owners would be required to make all payments in lieu of taxes mutually agreed to with local taxing subdivisions.

#### ***PMIB Loans to Local Units***

Another provision would extend to all other taxing units authority currently available only to counties to request Pooled Money Investment Board (PMIB) loans for payment of property tax refunds when taxpayers have prevailed in assessed valuation challenges involving more than 5.0 percent of total countywide valuation.

### ***Property Tax – Valuation and Administration***

Other sections of the bill would make several changes relating to property tax valuation and administration.

One set of provisions would clarify that, during valuation hearings at the Court of Tax Appeals, values determined by county appraisers would have the initial presumption of validity and correctness with regard to leased commercial and industrial property, unless taxpayers had, within 30 days after certain informal hearings conducted earlier in the appeals process, furnished to counties complete income and expense statements for the previous three years.

Current law simply provides a blanket prohibition against a presumption of validity and correctness on behalf of county appraisers.

Additional provisions relating to the correction of errors would expand the types of clerical errors resulting in understatement of values or taxes to include errors in the description or quantity of real estate listed, errors placing improvements in the wrong tract or lot and errors placing real or personal property in the wrong taxing jurisdiction; and would clarify that the Court of Tax Appeals would have authority to order additional assessments or tax bills to be issued relative to the finding of such errors.

### ***Taxation of Watercraft***

A final section would implement changes to the property tax system for watercraft such that the current 30.0 percent assessment level would be reduced to 11.5 percent in tax year 2014, and then to 5.0 percent in tax year 2015 and thereafter. The minimum amount of annual tax levied would never fall below \$12 under any circumstances for any watercraft subject to taxation.

“Watercraft” would be defined to include those vessels requiring numbering pursuant to KSA 32-1110. The reduced

assessment rates also would be extended to certain trailers designed to launch, retrieve, transport, and store the watercraft, as well as nonelectric motors necessary to operate them on the water.

The bill would be in effect upon publication in the *Kansas Register*.

### **Conference Committee Action**

The Conference Committee, on April 1, agreed for the Senate to accept the House amendments to the bill (generally involving the income and severance tax provisions). The Conference Committee also agreed to add the “click-thru” nexus provisions from the Senate-passed version of SB 84; the property tax exemption relating to auto manufacturing from SB 235; the PMIB loan provisions from SB 222; the property tax valuation and administration changes from HB 2042; and the taxation of watercraft provisions from HB 2244.

### **Background**

The original bill dealt with the service fee issue and was requested for introduction and supported by the Department of Revenue. The Senate Committee on Assessment and Taxation amended the bill by striking provisions concerning an additional proposed processing fee of 12.0 percent on payments of delinquent taxes, and reinstated provisions to direct the moneys into the Recovery Fund.

The House Taxation Committee amended the bill on March 18 to incorporate the income and severance tax provisions from HB 2059 as amended by the House Taxation Committee, and it recommended a substitute bill be created.

The Department of Revenue has indicated the language repealing the different Kansas basis requirement would reduce State General Fund (SGF) receipts by \$8.0 million

annually beginning in FY 2014; and eliminating the add back for certain Subchapter S corporations with subsidiaries subject to the privilege tax would reduce receipts by an additional \$2.5 million annually. (No specific fiscal note has been provided with respect to the service fee provisions that remained in the bill as it left the Senate.) The reduction of \$10.5 million in SGF receipts was not taken into account in *The FY 2014 Governor's Budget Report*.

	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>5-yr Total</u>
Adjusted Basis	\$ (8.0)	\$ (8.0)	\$ (8.0)	\$ (8.0)	\$ (8.0)	\$ (40.0)
Sub S Add-Backs	(2.5)	(2.5)	(2.5)	(2.5)	(2.5)	(12.5)
<b>Total</b>	<b>(10.5)</b>	<b>(10.5)</b>	<b>(10.5)</b>	<b>(10.5)</b>	<b>(10.5)</b>	<b>(52.5)</b>

The only other part of the Conference Committee Report with a fiscal note that has been quantified relates to the tax reduction for watercraft. Data provided by the Property Valuation Division therefore indicated there would be the following reduction in local effort for purposes of the school finance formula from the mandatory school district general fund levy (20 mills) and in receipts to state building funds (1.5 mills):

<u>Fiscal Year</u>	(\$ in millions)		
	<u>20 mills</u>	<u>1.5 mills</u>	<u>Total</u>
2015	\$ (\$0.991)	\$ (\$0.074)	\$ (\$1.066)
2016	(\$1.367)	(\$0.102)	(\$1.469)
2017	(\$1.408)	(\$0.106)	(\$1.513)
2018	(\$1.450)	(\$0.109)	(\$1.559)
2019	(\$1.493)	(\$0.112)	(\$1.605)
<b>5-yr total</b>	<b>\$ (\$6.709)</b>	<b>\$ (\$0.503)</b>	<b>\$ (\$7.212)</b>

Income tax adjusted basis; severance tax clarification; sales tax nexus; property tax various; service fees; watercraft

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