Taxation—Various Provisions; House Sub. for SB 83

House Sub. for SB 83 enacts service fees related to delinquent tax liabilities; makes adjustments to various income and severance tax provisions enacted in 2012; establishes "click-thru" nexus language relating to sales and use tax; provides a property tax exemption for certain new automobile manufacturing property; authorizes local units of government under certain circumstances to request state loans to assist with refunding money to property taxpayers; provides several changes relating to property tax valuation and administration; and implements a number of changes in the property tax system for watercraft.

The provisions of the bill are expected to reduce FY 2014 State General Fund receipts by $10.5 million relative to prior law.

Service Fee Provisions

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

Income Tax Provisions

One part of 2012 legislation that had required 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interests or Subchapter S stock for Kansas income tax purposes than they do for federal income tax purposes is repealed.

An additional section clarifies for Kansas income tax purposes, the add back to federal adjusted gross income required of certain losses for Subchapter S corporations does 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 do 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 clarifies that the 50-barrel-per-day threshold enacted in 2012 relative to being excluded from the new pool severance tax exemption for oil will be determined based on the initial six months of production from each well.

Sales Tax "Click-Thru" Nexus Provisions

Additional sections implement "click-thru" nexus provisions relating to sales and use taxation. One part expands 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 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 creates provisions of law by which retailers may submit proof they do not meet the requirements established in the expanded definition.

Other language in the bill provides that any vendor selling or leasing tangible personal property to the state is 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, is null and void unless specifically approved by each chamber of the Legislature.

Property Tax Exemption – Auto Manufacturing

The bill further provides 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 applies only for a period of ten calendar years, and owners are required to make all payments in lieu of taxes mutually agreed to with local taxing subdivisions.

Pooled Money Investment Board (PMIB) Loans to Local Units

Another provision extends to all other taxing units authority currently only available to counties to request PMIB loans for payment of property tax refunds when taxpayers have prevailed in assessed valuation challenges involving more than 5 percent of total countywide valuation.

Property Tax – Valuation and Administration

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

One set of provisions clarifies that during valuation hearings at the Court of Tax Appeals, values determined by county appraisers will 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.

Additional provisions relating to the correction of errors 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 clarify that the Court of Tax Appeals has authority to order additional assessments or tax bills to be issued relative to the finding of such errors.

Taxation of Watercraft

A final section implements changes to the property tax system for watercraft such that the current 30 percent assessment level will be reduced to 11.5 percent in tax year 2014; and then to 5 percent in tax year 2015 and thereafter. The minimum amount of annual tax levied would never fall below $12 under any circumstances for all watercraft subject to taxation.

"Watercraft" is defined to include those vessels requiring numbering pursuant to KSA 32-1110. The reduced assessment rates also will 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.