

Taxation Omnibus; Senate Sub. for HB 2239

Senate Sub. for HB 2239 amends law related to property tax, income tax, and sales tax.

Property tax. The bill modifies revenue neutral rate notice and hearing procedures and provides for taxpayer complaint procedures; increases the residential property tax exemption from the uniform statewide school finance levy; specifies the classification of land used by zoos, used incidentally by certain agritourism activities, and in the federal Grassland Conservation Reserve Program; creates a property tax exemption for antique utility trailers; allows for the proration of certain personal property taxes; expands the authority of county commissions to abate property taxes for disaster-destroyed property; and modifies the definition of telecommunications machinery and equipment for purposes of property tax exemption.

Income tax. The bill enacts the SALT Parity Act; provides an income tax credit for certain contributions to technical and community colleges; provides for an income tax checkoff for contributions to Kansas state historic sites; enacts aviation, aerospace, and short-line railroad infrastructure tax credits; enacts a teacher classroom supplies tax credit; allows for refund claims pursuant to the Homestead Property Tax Refund Program based on tax growth from a base year; extends the Rural Opportunity Zones program; modifies the research and development tax credit; and allows for an additional personal exemption for certain disabled veterans.

Sales tax. The bill creates a sales tax exemption for agricultural fencing; enacts the Gage Park Improvement Authority Act; excludes separately stated shipping and handling charges from sales tax; repeals the sunset of the tax exclusion for motor vehicle manufacturer rebates; requires certain ballot language for countywide retail sales tax elections; authorizes a countywide sales tax in Wilson County; and validates a sales tax election in the city of Latham.

Property Tax

Revenue Neutral Rate Changes

The bill allows taxpayers owning property within a taxing subdivision, or their duly authorized representatives, to file complaints with the Board of Tax Appeals showing that a taxing subdivision did not comply with the notice and hearing and budget adoption provisions of the revenue neutral rate law. Upon the filing of a complaint, the governing body of the taxing subdivision will be required to provide evidence demonstrating, by a preponderance of the evidence, the validity of any challenged tax levy. If the Board of Tax Appeals finds the taxing subdivision did not comply with the revenue neutral rate requirements, the bill directs the Board to order refunds of property taxes paid or a reduction of taxes levied for taxes collected or levied in excess of the amount generated by the revenue neutral rate. The Board of Tax Appeals is required to provide a form for the filing of such complaints and is not permitted to charge a filing fee for any such complaints.

The bill directs county clerks to reduce the amount of property taxes to be levied by taxing subdivisions to the amount resulting in the taxing subdivision's revenue neutral rate if the

governing body of the taxing subdivision does not comply with the notice and hearing and budget adoption procedures required by the revenue neutral rate law.

The bill requires the revenue neutral notice to include the percentage by which the proposed property tax rate exceeds the revenue neutral rate.

The bill requires a roll call vote to approve a resolution or ordinance to exceed the revenue neutral rate. The bill requires a copy of the resolution or ordinance to exceed the revenue neutral rate and the roll call vote to be included in the adopted budget filed with the county clerk and Director of Accounts and Reports, and the bill requires such information to be published on the website of the Department of Administration.

The bill requires budgets of taxing subdivisions filed with the Director of Accounts and Reports to be filed on or before December 31 of each year. The Department of Administration is required to make such budget documents and revenue neutral rate documents available to the public on the Department of Administration's website via a conspicuous link on the front page of the Department's website.

The Department of Administration is also required to annually provide a list of taxing subdivisions by county with information concerning the revenue neutral rate of each taxing subdivision, whether the taxing subdivision held a hearing to exceed its revenue neutral rate, the tax rate resulting from the adopted budget, and the percent change between the revenue neutral rate and the tax rate for each taxing subdivision.

The bill provides that school districts are deemed to have not exceeded their revenue neutral rate in the event the revenue in excess of the prior year amount was solely attributable to increased revenue from the 20 mill statewide school finance levy.

Residential Property Tax Exemption

The bill increases the amount of the residential exemption from the 20 mill uniform statewide school finance property tax levy from \$20,000 of valuation to \$40,000 of valuation beginning in tax year 2022 and provides for the amount to be increased in future tax years according to the average percentage change in statewide residential real property for the preceding 10 tax years.

Zoo and Agritourism Land Classification

The bill provides that land utilized by zoos holding a class C exhibitor license issued by the U.S. Department of Agriculture and land devoted to the production of plants, animals or horticultural products that is incidentally used for agritourism activity, which is defined by the bill, is to be classified as land devoted to agricultural use for purposes of property taxation.

Grassland Conservation Reserve Program Land Classification

The bill specifies that, beginning in tax year 2023, all land devoted to agricultural use that is subject to the federal Grassland Conservation Reserve Program shall be classified as grassland for property tax purposes.

Antique Utility Trailers

The bill creates a property tax exemption beginning in tax year 2023 for antique utility trailers used exclusively for personal use and not for the production of income. The bill defines such trailers as 35 years old or older with an empty weight of 2,000 pounds or less and a gross weight of 8,000 pounds or less.

Personal Property Tax Proration

The bill provides the taxable value of personal property acquired or sold after January 1 and prior to September 1 of any taxable year to be prorated based upon the number of months, or majority portion thereof, the property was owned during the year divided by 12 months.

Property acquired on or after September 1 is not subject to tax for the current year.

This provision applies only to property taxed pursuant to Class 2, Subclass 6 under Article 11, Section 1 of the *Kansas Constitution*.

Disaster-destroyed Property Tax Abatements

The bill broadens the authority of county commissions to abate property taxes for all buildings and agricultural improvements listed as real property. County commissions have the option to abate taxes in situations where such property has been damaged in a gubernatorial-declared disaster and restoration costs equal or exceed 50 percent of pre-damage market value. An application for an abatement is required to be filed by December 20 of the year after the natural disaster.

Continuing law provides for comparable authority for residential homestead properties.

These provisions of the bill are retroactive to tax year 2019. For natural disasters occurring in 2019 or 2020, applications are permitted until December 20, 2022.

The bill also permits county commissions to consider any budgetary restraints of the county or taxing subdivision in evaluating applications for such abatements. Current law limits the consideration to budgetary restraints arising from the event or occurrence declared a disaster by the Governor.

Telecommunications Equipment Inventory and Work-in-Progress

The bill defines telecommunications machinery and equipment to include machinery and equipment placed in inventory or work-in-progress for purposes of the telecommunications machinery and equipment property tax exemption.

Income Tax

SALT Parity Act

The bill enacts the SALT Parity Act (Parity Act), providing certain pass-through entities (entities) with the option of paying state income taxes at the entity level rather than being paid by the individual owners of the pass-through entities.

The Parity Act, which applies for tax year 2022 and thereafter, requires entities to make the election to be subject to tax on a return filed by the entity, which is binding on all owners of the entity.

Entities electing to be subject to the tax are to pay a tax of 5.7 percent on the sum of each resident owner's distributive share of the entity's income and each nonresident owner's distributive share of the entity's income attributable to the State.

Entities electing to be subject to the tax are to be treated as corporations for purposes of estimated tax payments, but are not subject to penalties for underpayment of estimated tax during the first year of election. Any credits allowed for the entities, other than credits for taxes paid to other states, must be claimed by the electing entity.

Excess tax credits and carried forward net operating losses must be carried by electing entities and cannot be claimed by entity owners except when an election by an entity to be subject to tax at the entity is not made or not allowed.

Individual owners of electing entities are not separately or individually liable for entity tax and are entitled to a credit against their individual income for their direct share of the tax imposed on the entity.

Taxes paid by an electing entity to another state on income that is included in the Kansas adjusted gross income of a resident individual taxpayer are to be considered taxes paid to the other state by the resident individual taxpayer for purposes of the credit for taxes paid to other states.

The bill authorizes the Secretary of Revenue to adopt rules and regulations necessary for the implementation of the Parity Act and to require electing entities to furnish information necessary for the implementation of the Act.

Technical College and Community College Contribution Credit

The bill provides a non-refundable tax credit for donors to Kansas technical colleges and community colleges.

“Technical college,” as defined by the bill, includes the Flint Hills, Manhattan Area, North Central Kansas, and Salina Area technical colleges, in addition to the Washburn University Institute of Technology and the Wichita State University Campus of Applied Sciences and Technology.

Contributions to a Kansas technical college or community college for capital improvements, deferred maintenance, or technology or equipment purchases are eligible for a 60 percent non-refundable credit against:

- Income tax;
- Insurance premium tax and privilege fees; or
- Financial net income privilege tax.

The credit has an annual limit of \$250,000 for each taxpayer, not to exceed \$500,000 for any one technical college or community college. The total annual value of credits cannot exceed \$5.0 million. Tax credits issued under the program are not refundable or transferable.

Prior to the issuance of any credits under this tax credit program, the bill requires participating technical colleges and community colleges to develop a process for qualifying contributions as allowable deductions from federal adjusted gross income, in consultation with the Secretary of Revenue.

Technical colleges and community colleges must deposit contributions to their capital outlay funds.

The program applies to contributions made after July 1, 2022, and for tax years 2023, 2024, 2025, and 2026.

State Historic Sites Checkoff

The bill requires, beginning in tax year 2023, the individual income tax return form to contain a checkoff enabling taxpayers to make donations to Kansas state-owned historic sites in a specific amount (*e.g.*, \$1, \$5, \$10, or another amount).

The bill requires the Department of Revenue to assign a historic site number to each state-owned historic site to enable taxpayers to select the site to receive the donation.

The bill creates the Kansas Historic Site Fund, administered by the Department of Revenue. The proceeds of any such donation are to be deposited in the Kansas Historic Site Fund. The Department of Revenue must distribute the moneys in the fund to the historic site of the taxpayer’s choice to be used for the operation, maintenance, and preservation of the site.

Short-line Railroad Infrastructure Credit

The bill creates an income tax credit for any Class II or Class III railroad or any owner or lessee of rail siding located on or adjacent to a Class II or Class III railroad for tax years 2022 through 2031 equal to 50 percent of the qualified track maintenance expenditures paid or incurred during the taxable year for track located in the state of Kansas. Expenditures used to generate a federal tax credit or funded by a state or federal grant do not result in a credit.

The bill limits the credit to \$5,000 per mile of track or per rail siding owned or leased within the state as of the close of the taxable year. A mile of track may be taken into account only once in each taxable year, and the total amount of statewide credits allowed for each taxable year is limited to \$8.72 million.

Any unused credit can be carried forward for up to five taxable years. For the five taxable years immediately following the year for which the credits were allowed, the taxpayer earning the credits may transfer the credits to any eligible customer or eligible vendor. The bill requires any transfer of credit to be made by written agreement and requires the agreement to be filed with the Department of Revenue within 30 days of the transfer.

The bill defines an eligible customer as a business that uses short-line railroads or railroad-related property within Kansas, that is served by a short-line railroad, or stores railcars on the short-line railroad. An eligible vendor is defined as a person providing railroad-related services to the taxpayer earning the credits. Eligible customers and eligible vendors do not include Class I railroads.

The bill prohibits the credit from being refundable.

The bill requires the Secretary of Revenue to annually certify the tax credit amount allowed for each eligible taxpayer and authorizes the Secretary of Revenue and Secretary of Transportation to adopt rules and regulations to administer the credit and verify the eligibility of taxpayer expenditures for purposes of the credit.

Aviation and Aerospace Tax Credits

The bill allows employers whose principal business activity involves the aviation sector to receive a nonrefundable income tax credit beginning in tax year 2022 for tuition or certain program-specific course-fee reimbursements paid to a full-time “qualified employee,” as defined by the bill, who has graduated from an accredited engineering or technology undergraduate or graduate degree program, an associate of applied science degree program, or a career technical program. This credit can be claimed if the qualified employee, within one year prior to or following the commencement of employment with a qualified employer, graduated from a qualified program. This credit is capped at 50.0 percent of the total amount of tuition reimbursement paid and can be claimed each year, for up to the fourth year of employment with a qualified employer.

The bill also creates, beginning with tax year 2022, a nonrefundable tax credit for taxpayers for an amount equal to 10.0 percent of the compensation paid to qualified employees in each of the first five years of employment, not to exceed \$15,000 per year. The credits cannot

be carried forward. For the purposes of the bill, compensation does not include benefits or reimbursable expenses.

Additionally, the bill creates, beginning with tax year 2022, a nonrefundable tax credit for taxpayers who become qualified employees during the taxable year. Employees with income tax liability less than \$5,000 are eligible to carry any unused credit forward for up to four additional tax years.

The bill authorizes the Secretary of Revenue to adopt rules and regulations to implement and administer these provisions of the bill. The Secretary of Revenue is required to submit annual reports on the cost effectiveness of the program to the House Committee on Appropriations and the Senate Committee on Ways and Means, beginning with the 2023 Legislative Session.

No new tax credits are to be issued or earned after December 31, 2026.

Teacher Classroom Supplies Tax Credit

The bill creates an individual income tax credit for public or private school teachers residing in Kansas equal to the taxpayer's expenditures for school and classroom supplies during the tax year.

The credit is effective beginning in tax year 2022 and will be limited to \$250 per year.

Homestead Property Tax Refund Claims

The bill provides for refund claims to be paid to claimants for the amount by which the claimant's residential property tax exceeds the amount of the claimant's property tax in the claimant's base year.

The bill defines "base year" to be the year in which the claimant becomes eligible for a refund under the provisions, or 2021, whichever is later. If a claimant becomes ineligible for a refund, the claimant would continue to use the original base year if the claimant later is again eligible for a refund.

A claimant must be at least 65 years old or a disabled veteran, reside in a homestead with an appraised value of \$350,000 or less for the entire year, and have a household income of \$50,000 or less. The \$50,000 amount is to be annually adjusted by the cost of living adjustment in Section 1(f)(3) of the Internal Revenue Code. Surviving spouses of eligible claimants continue to be eligible unless they remarry. The \$350,000 limitation only applies to the claimant's base year.

Claimants for refunds are prohibited from requesting refunds under the existing Homestead Property Tax Refund or Selective Assistance for Effective Senior Relief Credit programs.

Rural Opportunity Zone Program

The bill extends the sunset on the rural opportunity zone student loan repayment program from July 1, 2023, to July 1, 2026. The bill also extends the sunset on the income tax credit and reporting requirements for the Secretary of Commerce from January 1, 2024, to January 1, 2027.

Research and Development Tax Credit

The bill increases the Research and Development Activities Tax Credit from 6.5 percent to 10.0 percent of qualified expenditures and allows the credit to be claimed by all income taxpayers rather than only by corporate income taxpayers.

The bill allows for a one-time transfer of the credit in its entirety by a taxpayer without a current tax liability. The credit will be transferable to any person and could be claimed by that person as a credit against their state income tax liability in the year of the transfer. The transferred credit is non-refundable, but can be carried forward until fully used.

This provision is effective for tax years commencing after December 31, 2022.

Disabled Veterans Additional Personal Exemption Allowance

The bill provides for veterans who have been honorably discharged and 100 percent disabled through military service to receive an additional personal exemption amount of \$2,250 from individual income tax beginning in tax year 2023.

Sales Tax

Agricultural Fencing Sales Tax Exemption

The bill creates a sales tax exemption for purchases necessary to reconstruct, repair, or replace a fence used to enclose agricultural land that was damaged or destroyed by wildfire, flood, tornado, or other natural disaster occurring on or after January 1, 2021.

To be eligible for the exemption, the property containing the fence must be located within an area declared to be a disaster by the federal, state, or local government and the purchases must be made within two years of the date of the applicable disaster declaration.

For applicable purchases already made, taxpayers are entitled to a refund of sales tax upon provision of appropriate documentation.

Beginning July 1, 2022, the bill exempts from sales tax all sales of tangible personal property and services necessary to construct, reconstruct, repair, or replace any fence used to enclose agricultural land.

Gage Park Improvement Authority

The bill enacts the Gage Park Improvement Authority Act (Authority Act), providing for the Shawnee County Commission to submit a question to the voters of Shawnee County regarding the creation of a Gage Park Improvement Authority (Authority) and the imposition of a local sales tax to benefit Gage Park, the Topeka Zoo, and the Kansas Children's Discovery Center.

Creation of the Authority and imposition of a tax. The bill authorizes the Shawnee County Commission, after a public hearing and adoption of resolution, to submit to the voters of Shawnee County a question of the creation of the Authority and imposition of a sales tax of at least 0.2 percent and not more than 0.5 percent to benefit Gage Park, the Topeka Zoo, and the Kansas Children's Discovery Center. The bill also requires the Commission to submit the question to the voters upon the submission of a petition signed by Shawnee County voters numbering at least 5 percent of the number of Shawnee County voters voting in the most recent regular county election.

If a majority of voters vote in favor of the Authority and tax, the Authority is to be created and the tax imposed. The tax is to be administered by the Department of Revenue in the same manner as other countywide retailers' sales taxes, except the tax will not count towards Shawnee County's sales tax authority, and the entire proceeds of the tax are to be deposited in the Gage Park Improvement Sales Tax Fund within the State Treasury and remitted at least quarterly to the Authority.

If a majority of the voters do not vote in favor of the Authority and the tax, the question cannot be submitted to the voters again for a period of one year.

If the tax rate submitted to the voters is less than 0.5 percent, the Shawnee County Commission is permitted to submit an additional question to voters at a later date to increase the sales tax rate up to 0.5 percent. If a majority of the voters do not vote in favor of the additional tax, the question cannot be submitted to the voters again for a period of one year.

Any sales taxes enacted pursuant to the Authority Act are to remain in effect unless repealed in the same manner as the approval of the tax.

Authority governance and operation. The Authority is to be governed by a board of seven residents of Shawnee County:

- The Director of Shawnee County Parks and Recreation, or designee;
- The Director of the Topeka Zoo, who may be the head of a nonprofit operator of the Topeka Zoo, or designee;
- The Director of the Kansas Children's Discovery Center, who may be the head of a nonprofit operator of the Kansas Children's Discovery Center, or designee;
- Two members appointed by the Topeka City Council; and

- Two members appointed by the Shawnee County Commission.

Members appointed by the Topeka City Council and Shawnee County Commission will serve three-year terms or until a successor is appointed, but can be removed by the appointing entity. The terms of the directors last as long as the individual is in that position. Any vacancies are to be filled in the same manner as the vacated member was appointed.

The board must annually select a chairperson, vice chairperson, and secretary from its membership and must meet at least quarterly in Shawnee County at a suitable location provided by the County.

A majority of the members of the board constitute a quorum, and no action can be taken by the board without a quorum present and a majority of members present voting in favor of the action.

Authority powers and duties. The Authority is required to distribute and spend the proceeds of the sales tax imposed pursuant to the Act. The proceeds of the first 0.2 percent sales tax are to be distributed as follows:

- 22.0 percent to Shawnee County to be used for the benefit of Gage Park;
- 58.0 percent to the Topeka Zoo and directed to any nonprofit operator of the Topeka Zoo;
- 15.0 percent to the Kansas Children's Discovery Center and directed to any nonprofit operator of the Discovery Center; and
- 5.0 percent at the discretion of the Authority for the improvement, operation, and maintenance of Gage Park, the Topeka Zoo, and the Kansas Children's Discovery Center, community enrichment and outreach, children's educational programming, other items of public benefit and interest related to Gage Park, and the actual and necessary expenses of the members of the Authority in carrying out their duties.

The proceeds of any sales tax in excess of 0.2 percent are to be used as determined by the Authority for the improvement, operation, and maintenance of Gage Park, the Topeka Zoo, and the Kansas Children's Discovery Center, community enrichment and outreach, children's educational programming, other items of public benefit and interest related to Gage Park, and the actual and necessary expenses of the members of the Authority in carrying out their duties.

The Authority has the power to sue or be sued, to enter into contracts, to solicit and receive donations and grants, and to adopt bylaws consistent with the Authority Act.

The Authority has all other necessary and incidental functions and duties consistent with Kansas law to effectuate its purposes provided by the Authority Act. The Authority would be subject to dissolution in the same manner as its creation.

Other provisions. The bill requires Shawnee County to appropriate funds necessary to operate the Authority for the first six months following its creation, after which the Authority must be financed by the sales tax provided by the Authority Act. The Authority is required to keep accounts and records of its transactions that are to be audited periodically as directed by Shawnee County. The Authority must prepare an annual report on its operations and transactions to be submitted to the Topeka City Council and Shawnee County.

The bill also defines relevant terms for the implementation of the Act.

Shipping and Handling Charges

The bill excludes delivery charges that are separately stated on an invoice or similar document from the sales price for purposes of retail sales and compensating use tax.

Motor Vehicle Rebates Sales Tax Exclusion Sunset Repeal

The bill repeals the June 30, 2024, sunset for an exclusion from sales tax of cash rebates granted by manufacturers to purchasers or lessees of new motor vehicles if such rebates are paid directly to retailers.

Countywide Retail Sales Tax Ballot Proposition Language

The bill requires the ballot proposition for any countywide sales tax to include information indicating whether the revenue from the sales tax would be subject to the statutory apportionment formula, whether the county would retain the entirety of the revenue pursuant to statute, or whether an interlocal agreement is entered into specifying the retention of the amount of revenue by the county.

Wilson County Tax Authority

The bill allows Wilson County to impose, subject to voter approval, a countywide sales tax of up to 1.0 percent in 0.25 percent increments to finance county emergency medical and ambulance services. The proceeds of the tax are not subject to apportionment to the cities within the county.

The tax expires after ten years from the date first collected, but can be extended for additional periods not exceeding ten years, upon voter approval.

City of Latham Sales Tax Election Validation

The bill validates the city of Latham election held on November 2, 2021, for a measure to increase the city sales tax by 0.5 percent, for which notice was first published 20 days prior to the election, instead of 21 days.

Fiscal Effects

The bill is expected to reduce state receipts, as follows.

	(Dollars in Millions)		
	FY 2023	FY 2024	FY 2025
Homestead Refund Option	\$ (6.9)	\$ (14.0)	\$ (21.6)
Tech. and Comm. College Credit	(5.0)	(5.0)	(5.0)
Short-line Railroad Infrastructure Credit	(8.7)	(8.7)	(8.7)
Teacher Classroom Supplies Tax Credit	(10.4)	(10.4)	(10.5)
Disaster-destroyed Ag. Fencing	(3.4)	(2.2)	(2.2)
Motor Vehicle Rebate Sunset Repeal	-	-	(3.9)
Shipping and Handling Sales Tax	(4.0)	(4.0)	(4.0)
Aviation Tax Credits	(7.9)	(7.9)	(7.9)
Rural Opportunity Zones	-	-	(5.5)
Research and Development Credit	-	(0.9)	(0.9)
Disabled Veteran Personal Exemption	(0.3)	(0.9)	(0.9)
<i>Subtotal State General Fund</i>	<u>\$ (46.6)</u>	<u>\$ (53.0)</u>	<u>\$ (71.1)</u>
Disaster-destroyed Ag. Fencing	\$ (0.6)	\$ (0.4)	\$ (0.4)
Motor Vehicle Rebate Sunset Repeal	-	-	(0.8)
Shipping and Handling Sales Tax	(0.8)	(0.8)	(0.8)
<i>Subtotal State Highway Fund</i>	<u>\$ (1.4)</u>	<u>\$ (1.2)</u>	<u>\$ (2.0)</u>
Telecommunication WIP and Inventory	\$ (0.1)	\$ (0.1)	\$ (0.1)
Residential Property Tax Exemption	(42.8)	(44.5)	(46.3)
<i>Subtotal State School District Finance Fund</i>	<u>\$ (42.9)</u>	<u>\$ (44.6)</u>	<u>\$ (46.4)</u>
Total All Funds	<u>\$ (90.9)</u>	<u>\$ (99.8)</u>	<u>\$ (119.6)</u>