

Taxation Omnibus; SB 8

SB 8 amends law related to property, sales, and income taxes.

Property tax provisions of the bill include changes related to filing statements for personal property, a specification of land classification related to agritourism, changes to the Homestead Refund Program, the creation of a property tax exemption for certain businesses located near facilities where a government entity competes against the business, changes to the revenue neutral rate hearing notice, an extension of state reimbursement for county expenses related to printing and postage of revenue neutral rate hearing notices, changes to property valuation notices, changes to certain property appeal procedures, and codification of property valuation adjustments related to adverse influences affecting agricultural land.

Sales tax provisions of the bill include a sales tax exemption for certain telecommunications infrastructure and a sales tax price exclusion for manufacturer's coupons.

Income tax provisions of the bill include subtraction modifications for certain net operating losses and tax credit disallowances, changes to the SALT Parity Act, reductions in penalties for late remittance of withholding taxes, the enactment of the Pregnancy Resource Act, changes to tax credits for adoption, and changes to the Disability Employment Act tax credit.

Property Taxes

Personal Property Tax Filings

The bill limits the instances in which a taxpayer must file statements regarding tangible personal property for tax purposes, reduces penalties for late filings, and specifies circumstances in which extensions of time for filing such statements and abatements of penalties are to be provided.

Single Initial Filing

The bill provides that if an initial statement listing tangible personal property for taxation has been filed with a county appraiser, future annual filings are only required when there has been a change to report that is related to the property previously listed or to the initial statement.

Reduced Penalties

The bill reduces the penalty for late filing of oil and gas leases and tangible personal property from 5 percent to 2 percent per month with the maximum penalty for late filing being reduced from 25 percent to 10 percent. The penalty for a failure to file resulting in escaped taxation is reduced from 50 percent to 12.5 percent.

Extensions of Time and Abated Penalties

The bill requires county appraisers, who currently have discretionary authority to do so, to grant an extension of a reasonable amount of time for taxpayers to file tangible personal property for taxation upon a showing of good cause.

County appraisers and the State Board of Tax Appeals are required to abate late filing penalties under cases of excusable neglect or in the event the property has been repossessed by a creditor who paid the taxes on the property. [Note: Current law provides only the State Board of Tax Appeals with discretionary authority to abate such penalties.]

Beginning in tax year 2022, such good cause and excusable neglect are specified to include instances in which tangible personal property had been previously classified as real property or a fixture to real property and was reclassified to be personal property. Such instances are specified to include machinery and equipment used in industries of grain storage and processing and ethanol or other biofuels processing.

Agritourism Land Classification

The bill specifies, beginning in tax year 2021, that land devoted to agricultural use includes land and buildings utilized as part of a registered agritourism activity at a registered agritourism location by a registered agritourism operator.

The selling of merchandise associated with the registered agritourism activity by the agritourism operator does not change the classification of the land or buildings as a result of such sales.

Homestead Property Tax Refund Act Changes

The bill makes changes to the refund option providing for a refund of the amount of tax in excess of the base year amount under the Homestead Property Tax Refund Act. [Note: The Homestead Property Tax Refund Act includes three different refund options. The other two refund options are not impacted by the bill.]

The bill, for purposes of only this refund option, excludes from the definition of “household income” all Social Security benefits, of which one-half have been included in the definition.

The bill increases the maximum amount of income for which taxpayers are eligible for this refund option from \$50,000 to \$80,000 and excludes eligible disabled veterans from being required to have incomes below \$80,000 in order to be eligible for this refund option.

The bill increases the maximum appraised value of an eligible claimant’s home in the base year from \$350,000 to \$500,000 and provides for future increases to this amount based upon the average percentage change in statewide residential valuation of existing residential real estate for the preceding 10 years.

The changes to the refund option are retroactive to tax year 2022, and the deadline to file claims for tax year 2022 is extended from April 15, 2023, to April 15, 2024.

Government Competition Property Tax Exemption

The bill creates, beginning in tax year 2024, a real and personal property tax exemption for certain businesses located in cities where a facility owned or operated by a governmental entity competes against the business or within five miles of a facility owned or operated by a governmental entity that competes against the business.

Businesses qualifying for the exemption are limited to child care centers, health clubs, or restaurants. The property must be used predominantly for the qualifying business.

In order to qualify for the exemption, the business must be in compliance with state law, city ordinances, and county resolutions and current in payment of state and local taxes.

For businesses that first begin ownership, operation, and use of property for a qualifying purpose after July 1, 2023, the exemption is only to be granted if the competing activity by the governmental entity began after the business began using the property.

“Competing against the business” is defined to mean offering the same or substantially the same goods or services to the public and receiving payment for the goods or services at least one-half the number of days per tax year as the business claiming the exemption and the facility owned or operated by a government entity is used predominantly for child care center, health club, or restaurant purposes. It is defined to exclude:

- The provision of goods and services without receiving payment; and
- The provision of goods or services predominantly to employees or students of the governmental entity.

Applicable governmental entities include the State of Kansas or any county, city, township, school district, community college, municipal or public university, and any other taxing district or political subdivision of the State that is supported with tax funds.

The bill requires ballot propositions to finance facilities owned or operated by governmental entities to include language indicating that such facility may compete against private business and cause private businesses to become exempt from property taxes.

Revenue Neutral Rate Hearing Notice and Reimbursement

The bill extends for one additional year, through calendar year 2024, the state reimbursement of printing and postage costs incurred when county clerks are required to mail notices of proposed tax increases beyond the revenue-neutral rate. The bill also extends the transfer from the State General Fund to the Taxpayer Notification Costs Fund to reimburse the printing and postage costs for one additional year.

The bill replaces the current provisions establishing minimum requirements for the contents of the revenue neutral rate hearing notice with new provisions specifying the heading and opening statement of the notice and requiring:

- The appraised and assessed value of the taxpayer's property for the current and previous year;
- The amount of property tax of each taxing subdivision on the property from the previous year's tax statement;
- The estimated amount of property tax for the current year of each taxing subdivision based on the revenue neutral rate;
- The estimated amount of property tax for the current year of each taxing subdivision based on the greater of the revenue neutral rate or the proposed tax rate provided by the subdivision to the county clerk, if the subdivision has notified the clerk of its intent to exceed the revenue neutral rate;
- The difference between the current year's maximum tax and the previous year's tax, in both dollars and percent, for each taxing subdivision;
- The date, time, and location of the hearing for each subdivision intending to exceed the revenue neutral rate; and
- For each taxing subdivision holding a revenue neutral rate hearing, the difference between the current year's maximum tax and the estimated tax at the revenue neutral rate.

Property Valuation Notice Information

The bill requires annual property valuation notices provided by county appraisers to include the appraised and assessed value of the property for the current year and two preceding years, changed from information for the current year and one preceding year.

Residential Real Property Valuation Appeals

The bill permits the use of appraisals performed by Kansas Certified Residential Real Property Appraisers for the equalization appeal procedure wherein a taxpayer files a third-party fee simple appraisal within 60 days after the notice of informal meeting results or final determination is mailed to the taxpayer. [Note: Current law provides for only the use of appraisals performed by Kansas Certified General Real Property Appraisers for this appeal procedure.]

Payment Under Protest Prohibition Repeal

The bill eliminates a provision prohibiting a taxpayer from appealing the valuation of their property using the payment under protest appeal procedure if they have already appealed their valuation pursuant to the equalization appeal and informal meeting procedure.

Agricultural Land Adverse Influence

The bill codifies the adjustments reducing the taxable value of agricultural land on the basis of adverse influences not sufficiently accounted for in the agricultural use valuation formula that are currently provided for in administrative guidance from the Property Valuation Division of the Department of Revenue.

The codified adverse influences include, but are not limited to:

- Canopy cover, for which value is reduced from 20 percent to 50 percent based upon canopy covering of 25 percent to 100 percent of the impacted land.
- Salinity and alkalinity, for which value is reduced based upon a taxpayer-provided soil analysis from a crop consulting service;
- Water table fluctuation, for which value is reduced based upon the results of a U.S. Department of Agriculture Natural Resources Conservation Service review of the water table levels of the impacted land; and
- Newly constructed drainage and flood control areas, for which value is reduced based upon the impact on land use from newly constructed drainage and flood control areas.

Sales Taxes

Telecommunications Sales Tax Exemption

The bill creates a sales tax exemption for the purchase of equipment, machinery, or other infrastructure purchased for use in the provision of internet access service, telecommunications service, or video service and for the purchase of repair, maintenance, and installation services by providers in the provision of such internet access service, telecommunications service, or video service.

The exemption expires on July 1, 2028.

Manufacturer's Coupons Sales Tax Exclusion

The bill excludes from sales price, for purposes of retail sales and compensating use taxes, the amount of coupons issued by a manufacturer, supplier, or distributor when the seller accepts such coupons and is reimbursed by the manufacturer, supplier, or distributor.

The exclusion takes effect January 1, 2024.

Income Taxes

Net Operating Loss Subtraction Modification

The bill creates a subtraction modification allowing taxpayers who carried back federal net operating losses in tax years 2018 through 2020 pursuant to the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act to subtract such amounts from their income for purposes of determining Kansas adjusted gross income. Taxpayers are permitted to carry forward such net operating loss for up to 20 years if the amount exceeds the Kansas adjusted gross income of the taxpayer.

The bill extends the deadline for eligible taxpayers to file amended returns for tax years 2018 through 2020 until April 15, 2025.

Federal Tax Credit Disallowance Subtraction Modifications

The bill enacts subtraction modifications in determining Kansas adjusted gross income equal to 100 percent of the amount of federal disallowance related to the Work Opportunity Tax Credit and similar credits under section 280C of the federal Internal Revenue Code and, effective for tax year 2020 and all years thereafter, 25 percent of the amount of federal disallowance related to the Employee Retention Tax Credit.

SALT Parity Act Changes

The bill clarifies that the tax on electing entities under the SALT Parity Act will be levied on:

- The *pro rata* or distributive share of the entity's income for each nonresident owner that is attributable to the Kansas; and
- The *pro rata* or distributive share of the entity's income for each resident owner calculated either before or after allocation and apportionment to Kansas. Entities will be required to use the same method of calculation for all resident owners.

The bill provides that tax credits attributable to the electing entity will be passed through to and claimed by the entity owner.

The provisions are retroactive to tax year 2022.

Withholding Tax Remittance Penalties

The bill replaces the 15 percent penalty for employers not timely remitting withholding taxes with a graduated penalty system providing for penalties as follows:

- 2 percent, if the remittance is 1 to 5 days late;

- 5 percent, if the remittance is 6 to 15 days late;
- 10 percent, if the remittance is more than 15 days late; and
- 15 percent, if the remittance is more than 15 days late and the Department of Revenue notified the taxpayer regarding the delinquency, but the tax was not remitted within 10 days of the notification.

Pregnancy Resource Act

The bill creates the Pregnancy Resource Act, which provides for a tax credit for contributions to nonprofit pregnancy centers or residential maternity centers exempt from federal income tax pursuant to section 501(c)(3) of the federal Internal Revenue Code, provided that such centers:

- Maintain a dedicated phone number for clients;
- Maintain a primary physical office, clinic, or residential home in Kansas for a minimum of 20 hours a week, excluding state holidays;
- Offer services free of charge to clients for the express purpose of providing assistance to women in carrying pregnancies to term, preventing abortion, and promoting healthy childbirths, and
- Utilize trained and licensed medical professionals in the performance of any available medical procedures.

The credit may be claimed against income, privilege, or premium tax liability beginning tax year 2023, in an amount equal to 50.0 percent of voluntary contributions made to such centers, and may be carried forward for up to five future tax years following the tax year in which the eligible contribution was made. No contribution may be payment for services rendered.

The aggregate amount of credits claimed is limited to \$10.0 million per tax year, with no more than \$5.0 million per tax year in credits claimed for contributions to any single organization.

Administration of Credits

Taxpayers claiming the credit must provide the Department of Revenue with the amount of the contribution and the name of the organization to which it was made. Prior to claiming credits, taxpayers must apply on forms provided by the Department certifying the dollar amount of the contribution made or to be made within the calendar year.

The Department of Revenue is required to allocate credits within 30 days after the receipt of an application. If the full credit amount cannot be allocated due to the annual aggregate limit having been reached, the Department is required to notify applicants within 30

days of any amount to be allocated. Prospective contributions must be made within 90 days of the allocation of a credit, which is otherwise canceled and may be reallocated.

Eligible charitable organizations must provide the Department of Revenue with a written certification, made under penalty of perjury, of eligibility in regard to the requirements specified by the bill, along with any other information the Department requires to administer its provisions. The Department is required to review each such certification and make a determination of eligibility, and make publicly available a list of eligible organizations. The Department is authorized to periodically request recertification from organizations.

Credits claimed by S-corporations, partnerships, limited liability companies, or other pass-through entities are to be distributed proportionally to shareholders, partners, or members according to ownership or as mutually agreed to by the parties.

Adoption Tax Credit

The bill increases, beginning in tax year 2023, the adoption tax credit to 75 percent of the federal adoption tax credit for most children and to 100 percent of the federal adoption tax credit if the child was a Kansas resident prior to the adoption and is a child with special needs, as defined in federal law.

[*Note:* Current law provides for a tax credit amount of 25 percent of the federal adoption tax credit and additional amounts of 25 percent if the child adopted was a Kansas resident prior to the adoption and 25 percent if the child was a Kansas resident prior to the adoption and is a child with special needs, as defined in federal law.]

The bill provides, beginning in tax year 2023, for the adoption tax credit to be a refundable tax credit.

Disability Employment Act Tax Credit Changes

The bill makes changes to the tax credit for certain purchases, including naming the credit, modifying the duration and extent of the credit, expanding the definition of “individuals with disabilities,” and restructuring the definition of “qualified vendor” from whom purchases may be made.

Name Change

The provisions of the tax credit are named the Disability Employment Act.

Duration and Extent of Credit

The bill eliminates the provision specifying the credit will expire after tax year 2023. The bill provides for a cap on the aggregate amount of credits under the Disability Employment Act to be \$5.0 million in tax years 2019 through 2023, \$10.0 million in tax years 2024 through 2028, and \$10.0 million for each successive five tax years starting in tax year 2029.

Individuals with Disabilities Definition

The bill expands the definition of “individuals with disabilities” to include individuals who are certified by a health care provider, as determined by the Department of Revenue, who can substantiate an individual as having a physical or mental impairment that constitutes a substantial barrier to employment. The bill also eliminates a requirement that individuals with disabilities work a minimum number of hours per week to qualify for health insurance coverage.

Qualified Vendor Definition

The bill provides for three options by which an entity may qualify as a qualified vendor:

- A not-for-profit business qualifying as a certified business pursuant to KSA 75-3740 that:
 - Does business primarily in Kansas or substantially all of its production in Kansas;
 - Employs at least 30.0 percent of its employees in an integrated setting;
 - Offers to contribute at least 75.0 percent of the premium cost for health insurance coverage for each eligible employee; and
 - Does not employ individuals under a certificate issued by the U.S. Secretary of Labor under 29 U.S. Code section 214(c).
- A qualified vendor pursuant to KSA 75-3317 that:
 - Employs at least 30.0 percent of its employees in an integrated setting;
 - Offers to contribute at least 75.0 percent of the premium cost for health insurance coverage for each eligible employee, offers a company-sponsored insurance plan under the Affordable Care Act, pays the required subsidy to the Internal Revenue Service for employees to purchase insurance through the open market, or offers assistance to employees to cover at least 75.0 percent of their health insurance costs through legal and appropriate methodology; and
 - Does not employ individuals under a certificate issued by the U.S. Secretary of Labor under 29 U.S. Code section 214(c).
- A division of a Kansas not-for-profit organization that:
 - Does business primarily in Kansas or substantially all of its production in Kansas;
 - Within such division, employs at least 30.0 percent of its employees in an integrated setting;
 - Within such division, offers to contribute at least 75.0 percent of the premium cost for health insurance coverage for each eligible employee, offers a company-sponsored insurance plan under the Affordable Care Act, pays the required subsidy to the Internal Revenue Service for

employees to purchase insurance through the open market, or offers assistance to employees to cover at least 75.0 percent of their health insurance costs through legal and appropriate methodology; and

- Does not employ individuals under a certificate issued by the U.S. Secretary of Labor under 29 U.S. Code section 214(c) within such division or any other division of the not-for-profit corporation.

Current law limits qualified vendors to not-for-profit businesses qualifying as certified businesses pursuant to KSA 75-3740 and qualified vendors pursuant to KSA 75-3317 and prohibits any employment by the vendor under a certificate issued by the U.S. Secretary of Labor under 29 U.S. Code section 214(c).