

SESSION OF 2009

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2172**

As Agreed to March 31, 2009

**Brief\***

HB 2172, as amended, would provide new sales tax exemptions and clarify sales tax exemption law with respect to certain transactions; would clarify the estate tax relative to the valuation of agricultural land; would clarify statutory deadlines applicable to the filing of certain income tax refund claims; and would expand the Homestead Property Tax Refund program.

*Sales Tax Provisions*

The bill would repeal the sunset on an existing sales tax exemption for cash rebates granted by manufacturers to purchasers or lessees of new motor vehicles if such rebates are paid directly to retailers as a result of the original sales.

The bill also would exempt purchases made by or on behalf of Goodwill Industries Easter Seals of Kansas, Inc. and Goodwill Industries of Kansas, Inc. for the purpose of providing education, training, and employment opportunities for people with disabilities and other barriers to employment.

Additional exemptions would be provided for sales of game birds used in hunting; fees and charges for participation in guided and non-guided hunts and fishing excursions and expeditions; and hunting or fishing leases.

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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>

Another exemption would be provided for purchases by or on behalf of Sheltered Living, Inc.

The bill further would provide exemptions for purchases and sales made by or on behalf of the Kansas Fairgrounds Foundation for purposes of beautifying the state fairgrounds.

Finally, the bill would provide an exemption for purchases made by or on behalf of All American Beef Battalion, Inc., for the purpose of educating, promoting, and participating as a contact group through the beef cattle industry in order to carry out such projects that provide support and morale to members of the United States armed forces and military services.

#### *Estate Tax Provisions*

Another section of the bill would clarify that agricultural land is to be use-valued for Kansas estate tax purposes, regardless of whether such land was held directly by decedents or was held in non-publicly traded legal entities, including certain partnerships, corporations, limited liability companies, or limited liability partnerships.

The clarification of the use-valuation provisions also would be retroactive relative to estates of decedents dying after December 31, 2006.

#### *Income Tax Provisions*

Additional provisions would amend KSA 79-3220 to clarify deadlines applicable to filing income tax refund claims.

The proposed amendment to subsection (c) would clarify that a taxpayer has three years from the date the original return is due, including any extensions allowed, to file a refund claim.

The proposed amendment to subsection (f) would provide that notwithstanding any otherwise applicable statute of limitations, the Department of Revenue would have 180 days after receipt of a revenue adjustment report to assess any additional tax.

The proposed amendment to subsection (g) would toll the 180-day period if a taxpayer has failed to timely report a revenue adjustment report to the Department.

#### *Homestead Provisions*

The bill also would expand the definition of eligible claimants for the Homestead Property Tax Refund Program to include certain disabled veterans and surviving spouses of active-duty military personnel who have died in the line of duty.

Disabled veterans would be defined to include Kansas residents who have been honorably discharged from active service in the armed forces or Kansas National Guard and who have been certified to have a 50 percent or more permanent disability sustained through military action or accident or resulting from disease contracted while in such active service.

The bill further would clarify that surviving spouses of disabled veterans would continue to remain eligible until such time as they remarry.

#### **Conference Committee Action**

The Conference Committee agreed to add to the Senate Committee of the Whole version of the bill the contents of HB 2353 (House Committee of the Whole version); the sales tax exemption for the Kansas Fairgrounds Foundation which had passed the House previously in HB 2299; the contents of SB 98 (Senate Assessment and Taxation Committee version); and the contents of House Sub. for SB 98 (House Taxation Committee version).

#### **Background**

A sales tax exemption for the rebates was enacted in 2006 but currently is scheduled to sunset on June 30, 2009. Proponents included the Kansas Automobile Dealers'

Association; General Motors; and Jeff Longbine, an Emporia vehicle dealer.

The Senate Committee of the Whole on March 23 amended the bill to include the provisions contained in SB 100 relative to the proposed exemptions for certain game birds and fishing and hunting-related participation charges. The Department of Revenue late in 2007 sent out a notice to certain individuals in the hunting industry which expressed an interpretation that sales taxes were due on a number of the transactions covered in the legislation. In May 2008, the Department subsequently sent a notice that it was reviewing its interpretation of the law and suspended enforcement and collection on the transactions in question for one year. A conferee representing the Department testified in 2009 that its review of the law again concluded that the transactions covered in the legislation are taxable under current law.

The Senate Committee of the Whole on March 23 also amended the bill to include one of the provisions from HB 2299 relating to the proposed exemption for the Goodwill entities.

The Department of Revenue stated that it had in the past erroneously issued one of the entities a sales tax exemption certificate which currently is scheduled to expire on November 1.

The Senate Committee of the Whole on March 23 also added the Beef Battalion amendment; and the Sheltered Living amendment.

Relative to the original provisions of SB 98, the Department of Revenue indicated during testimony that recent decisions by the Kansas Court of Appeals (*In re Appeal of Lemons*, Docket No. 98,469) and the Kansas Court of Tax Appeals (*In re Appeal of McColley*, Docket No. 2008-957-DT) had created confusion in identifying the appropriate statute of limitations relative to income tax refund claims. The Department also said that if the *Lemons* decision (currently being appealed) were to be upheld by the courts and the

*McColley* decision were to be found to have statewide application, the state could see a reduction of up to \$5 million per year in individual income tax receipts.

The latest fiscal notes available as to the other provisions of the bill are as follows:

homestead property tax refund program

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(\$ in millions)

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	Total	SGF	SHF
Goodwill Entities	(\$0.038)	(\$0.039)	(\$0.040)	(\$0.040)	(\$0.041)	(\$0.198)	(\$0.174)	(\$0.024)
Car Rebates	(\$3.200)	(\$5.300)	(\$10.000)	(\$10.200)	(\$10.404)	(\$39.104)	(\$34.308)	(\$4.796)
Birds, Fish, Hunting	(\$0.500)	(\$0.510)	(\$0.520)	(\$0.531)	(\$0.541)	(\$2.602)	(\$2.283)	(\$0.319)
Beef Battalion	(\$0.004)	(\$0.004)	(\$0.004)	(\$0.004)	(\$0.004)	(\$0.021)	(\$0.018)	(\$0.003)
State Fairgrounds	minimal	minimal	minimal	minimal	minimal	minimal	minimal	minimal
Sheltered Living	(\$0.030)	(\$0.031)	(\$0.031)	(\$0.032)	(\$0.032)	(\$0.156)	(\$0.137)	(\$0.019)
Homestead Program	(\$0.215)	(\$0.215)	(\$0.215)	(\$0.215)	(\$0.215)	(\$1.075)	(\$1.075)	\$0.000
Estate Tax	(\$0.530)	\$0.000	\$0.000	\$0.000	\$0.000	(\$0.530)	(\$0.530)	\$0.000
Total	(\$4.517)	(\$6.098)	(\$10.810)	(\$11.022)	(\$11.238)	(\$43.686)	(\$38.525)	(\$5.161)