

SESSION OF 2022

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2239**

As Amended by Senate Committee of the Whole

Brief*

Senate Sub. for HB 2239, as amended, would create the Golden Years Homestead Property Tax Freeze Program (refund program), increase the individual income tax standard deduction, enact the SALT Parity Act (Act), amend law related to carrying forward net operating losses, create tax exemptions for federal disallowances related to certain employment tax credits, create tax credits for contributions to technical and community colleges, and provide for an income tax checkoff for state historic sites.

Golden Years

The bill would establish a new property tax circuit breaker refund program beginning in tax year 2022 that would provide refunds of a portion of property taxes paid on qualifying residential homestead property equivalent to the total property tax increase over the base year. For taxpayers qualifying at the time of enactment, tax year 2021 liability would be deemed as the base year. For all other taxpayers, the base year would be the first year in which they are eligible to claim the refund provided by the refund program. Taxpayers who become ineligible would not lose their original base year should they again become eligible for the refund. The refund would be the amount of property tax in excess of the base year amount. The maximum amount of any refund under the program would be \$2,500.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

In order to qualify for the refund program, the bill would require a taxpayer to have a household income of less than \$75,000 and be 65 years of age or older or a disabled veteran. The household income threshold would be annually adjusted according to the federal cost-of-living adjustment provided for in Section 1(f)(3) of the Internal Revenue Code.

The value of the qualifying residential homestead property would be required to be less than \$485,000. Qualifying taxpayers would be ineligible to claim a refund if they would seek to claim the existing Homestead Property Tax Refund or Selective Assistance for Effective Senior Relief Refund. The bill would allow surviving spouses of qualified individuals to continue in the refund program unless they subsequently remarry. The bill would require refund program claims to be filed by April 15 for refund amounts determined by the previous property tax year's liability.

Under the bill, "disabled veterans" would include Kansas residents honorably discharged from active service in any branch of the armed forces of the United States or the Kansas National Guard who have been determined to have a 50.0 percent permanent disability sustained while on active duty.

Beginning with the second year of the program, the Director of Taxation would be required to send county clerks electronic records by October 1 of each year containing names of eligible claimants who have received refunds under the refund program for the prior year.

The bill would authorize the Director of Taxation to apply refunds to any state tax liability of the qualified individual or other member of the household. Remaining refunds would first be applied to any delinquent property taxes on the homestead and then to any current property tax liability.

The bill would grant the Secretary of Revenue authority to adopt rules and regulations necessary for administration of the refund program.

The bill also would incorporate the existing Homestead Property Tax Refund into the refund program and name the resulting program the Golden Years Homestead Property Tax Freeze Program.

Standard Deduction

The bill would increase the individual income tax standard deduction amounts for tax year 2023 and all years thereafter. The new amounts would be \$3,850 for single filers, \$8,800 for married filers, and \$6,600 for head of household filers.

SALT Parity Act

The bill would enact the SALT Parity Act (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 Act, which would apply for tax year 2022 and thereafter, would require entities to make the election to be subject to tax on a return filed by the entity, which would be binding on all owners of the entity.

Entities electing to be subject to the tax would 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 would be treated as corporations for purposes of estimated tax payments, but would be 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, would be required to be claimed by the electing entity.

Excess tax credits and carried forward net operating losses would be required to be carried by electing entities and could not be claimed by entity owners except in the case 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 would not be separately or individually liable for entity tax and would be entitled to a credit against their individual income for their direct share of the tax imposed on the entity. Corporation owners of electing entities would be required to add back their distributive share of the entities losses and subtract their distributive share of the entities gains in determining their Kansas taxable income.

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 would 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 would authorize the Secretary of Revenue to adopt rules and regulations necessary for the implementation of the Act and to require electing entities to furnish information necessary for the implementation of the Act.

Historic Hotels Net Operating Loss

The bill would permit, for individual income tax year 2006, a taxpayer to carry back a net operating loss incurred from the sale at a loss of a historic hotel located in a community with less than 2,500 citizens and improved by funds borrowed against the hotel and farmland owned by the taxpayer that is located within 20 miles of the hotel, for up to 3 years to offset the gain on the sale of such farmland if the majority of the proceeds from the sale of the farmland were used to pay off the mortgage on the historic hotel.

The bill would permit the taxpayer to file an amended return for the three prior years.

Carried Back Net Operating Loss Carry Forwards

The bill would create a subtraction modification allowing taxpayers who carried back federal net operating losses in tax years 2018 through 2020 to subtract such amounts from their income for purposes of determining Kansas adjusted gross income. Taxpayers would be permitted to carry forward such net operating losses for up to 20 years if the amount exceeds the Kansas adjusted gross income of the taxpayer.

Employment Credit Disallowance Exemptions

The bill would create income tax exemptions for the federal deduction disallowances associated with the federal Work Opportunity Tax Credit, or similar credits, and the federal Employee Retention Credit.

Technical College and Community College Contribution Credit

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

“Technical college,” as defined by the bill, would include 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 would be 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 would have an annual limit of \$500,000 for each taxpayer, not to exceed \$1.0 million for any one technical college or community college. The total annual value of credits could not exceed \$7.0 million.

Prior to the issuance of any credits under this tax credit program, the bill would require 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 would be required to deposit contributions to its capital outlay funds.

The program would apply to contributions made after July 1, 2022, and would sunset in tax year 2026.

State Historic Sites Checkoff

The bill would require, 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 would require the Department of Revenue (Department) to assigned a historic site number to each state-owned historic site to enable taxpayers to select the site to receive the donation.

The bill would create the Kansas Historic Site Fund, which would be administered by the Department. The proceeds of any donation would be deposited in the Kansas

Historic Site Fund. The Department would be required to 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.

Background

The bill contains the provisions of HB 2315, SB 76, SB 430, SB 495, SB 514, SB 543, and SB 556. The original provisions of HB 2239 were enacted in 2021 SB 50.

HB 2239

The bill was introduced by the House Committee on Taxation at the request of a representative of T-Mobile.

House Committee on Taxation

In the House Committee hearing on February 17, 2021, **proponent** testimony was provided by representatives of the Kansas Chamber of Commerce, T-Mobile, and the Wichita Regional Chamber of Commerce. The proponents stated a longer carry forward period would more effectively allow taxpayers to account for business expenses and remove a competitive disadvantage for job creation and capital investments in Kansas as compared with other states.

Written-only proponent testimony was provided by a representative of the Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association and a representative of the National Federation of Independent Business.

No other testimony was provided.

The House Committee adopted an amendment to allow losses to be carried forward indefinitely, as opposed to 20 years as in the bill as introduced.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing on March 22, 2021, **proponent** testimony was provided by representatives of the Kansas Chamber of Commerce and T-Mobile.

Written-only proponent testimony was provided by a representative of the Kansas Agribusiness Retailers Association, the Kansas Grain and Feed Association, and Renew Kansas Biofuels Association, and a representative of the National Federation of Independent Business.

No other testimony was provided.

The Senate Committee amended the bill to insert provisions to establish the Golden Years Homestead Property Tax Freeze Program, which had been introduced as SB 76. The Senate Committee recommended the bill be passed as a substitute bill.

On March 16, 2022, the bill was withdrawn from the Senate Calendar and rereferred to the Senate Committee.

Upon rereferral, the Senate Committee removed the contents of the bill providing for indefinite carryforward of net operating losses (HB 2239), modified the Golden Years provisions (SB 76), and inserted the standard deduction provisions, historic hotel net operating loss provision (SB 430), SALT Parity Act (SB 495), and net operating loss carry back carry forward provision (SB 543).

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to insert the provisions regarding technical college and community college contribution credits, as amended to reduce the maximum credit per taxpayer (HB 2315); add a provision providing for a state historic site checkoff (SB 514); add exemptions for certain federal employment credit

disallowances; and to adopt a technical amendment to the SALT Parity Act.

HB 2315 (Technical College and Community College Contribution Credit)

The bill was introduced by the House Committee on Taxation at the request of the Kansas Association of Technical Colleges.

House Committee on Taxation

In the House Committee hearing, **proponent** testimony was provided by representatives of the Kansas Association of Community College Trustees and the Kansas Association of Technical Colleges. The proponents stated Kansas technical colleges provide an outsized economic benefit to the state relative to the amount of funding they receive, and the bill would help them to have even more of a positive economic impact.

Written-only proponent testimony was provided by a representative of Washburn University.

No other testimony was provided.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by representatives of Kansas Technical Colleges and the Kansas Association of Community College Trustees. Written-only proponent testimony was provided by a representative of Washburn University.

No other testimony was provided.

The Senate Committee amended the bill to include community colleges in the tax credit program, double the

maximum credit amounts in the bill, reduce the percentage of the credit from 100 to 60, eliminate the refundability of the credit, and move the relevant dates back by one year.

SB 76 (Golden Years Homestead Property Tax Freeze Act)

The bill was introduced by Senators Holland, Corson, Faust Goudeau, Haley, Peck, Petersen, Pettey, Pittman, and Ware.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing on March 11, 2021, **proponent** testimony was offered by Senators Holland, Peck, and Pittman, a representative of the Kansas Association of Counties and a private citizen. The proponents stated the bill would make property tax bills more affordable for senior citizens.

Written-only proponent testimony was offered by Senator Petersen, a representative of the Kansas Association of Realtors, and two private citizens.

Opponent testimony was provided by a representative of the Kansas Chamber of Commerce, stating the bill would mask the true cost of property taxes and result in property tax shifts.

Written-only neutral testimony was offered by a representative of the Kansas Policy Institute.

SB 430 (Historic Hotels Net Operating Loss)

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of Senator Tyson on behalf of a private citizen.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, a private citizen testified as a **proponent**, stating the bill would allow him to offset a loss he incurred from the sale of a historic hotel in 2006 against gains he incurred from a 2005 sale of farmland. No other testimony was provided.

The Senate Committee recommended the bill be placed on the Consent Calendar.

SB 495 (SALT Parity Act)

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of a representative of the Kansas Society of Certified Public Accountants.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing on March 10, 2022, **proponent** testimony was provided by representatives of the Kansas Society of Certified Public Accountants, BKD, Kansas Chamber of Commerce, and the S Corporation Association, stating the bill would allow Kansas taxpayers to increase the amount of state taxes deducted at the federal level without reducing Kansas state revenues. Written-only proponent testimony was provided by representatives of the National Federation of Independent Businesses and Wichita Regional Chamber of Commerce.

No other testimony was provided.

The Senate Committee amended the bill to replace a subtraction modification approach with a credit for taxes paid approach.

SB 514 (State Historic Sites Checkoff)

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of Senator Tyson.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the Lecompton Historical Society, the Mine Creek Battlefield Foundation, and two private citizens, generally stating the donations would allow for improvements to state historic sites and improved travel and tourism marketing. Written-only proponent testimony was provided by Senator Francisco.

No other testimony was offered.

The Senate Committee amended the bill to authorize the Department of Revenue to administer the Kansas Historic Site Fund and distribute the donations to the sites specified by taxpayers.

SB 543 (Carried Back Net Operating Loss Carry Forwards)

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of Senator Tyson.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing on March 10, 2022, **proponent** testimony was provided by a representative of BridgeBuilder Tax & Legal Services, stating the bill would allow certain Kansas taxpayers to take advantage of a federal tax reduction without having to increase their Kansas tax liability.

No other testimony was provided.

SB 556 (Employment Credit Disallowance Exceptions)

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of a representative of the Kansas Restaurant and Hospitality Association.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was provided by a representative of Mize CPA and a McDonald’s restaurant franchisee, generally stating the bill would allow employers who used the federal tax credits to claim the business expenses generating those credits on their state income taxes.

No other testimony was provided.

The Senate Committee amended the bill to remove a provision that would have sunset the Employee Retention Credit provision after tax year 2021.

Fiscal Information

According to the Department of Revenue, enactment of the bill is expected to have the following impact on state receipts:

(Dollars in Millions)

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
Golden Years	\$ (12.5)	\$ (25.0)	\$ (33.7)
Technical and Community College Credit	(7.0)	(7.0)	(7.0)
Standard Deduction	<u>(9.4)</u>	<u>(31.5)</u>	<u>(31.9)</u>
Totals	<u>\$ (28.9)</u>	<u>\$ (63.5)</u>	<u>\$ (72.6)</u>

Note: Totals may not add due to rounding.

Additionally, enactment of the provisions related to the historic hotel net operating loss, net operating loss carry backs, and exemption for employment credit disallowances are all expected to have indeterminate, but negative effects on state receipts.

Enactment of the SALT Parity Act is expected to have an indeterminate impact on receipts.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Taxation; income tax; standard deduction; salt parity act; golden years; net operating losses; historic hotel; credits; technical colleges; community colleges; work opportunity tax credit; employee retention credit