

## HOUSE BILL No. 2327

By Representatives Sawyer, Ballard, Carlin, Davis, Finney, Grant, Henderson, Houston, Kuether, Menghini, Pauls, Trimmer, Weigel, Whipple, Wilson and Winn

2-13

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1 AN ACT concerning sales taxation; enacting the food sales tax refund.

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3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. The provisions of sections 1 through 8, K.S.A. 79-3632  
5 and 79-3639a, and amendments thereto, shall be known and may be cited  
6 as the food sales tax refund act.

7 Sec. 2. As used in the food sales tax refund act unless the context  
8 clearly indicates otherwise:

9 (a) "Income" means adjusted gross income determined under the  
10 Kansas income tax act without regard to the modifications specified by  
11 subsections (c)(i), (ii) regarding Kansas public employee retirement  
12 system retirement benefits, (vii), (ix) and (xii) of K.S.A. 79-32,117, and  
13 amendments thereto.

14 (b) "Household" means a claimant and all other persons for whom a  
15 personal exemption is claimed who together occupy a common residence.

16 (c) "Claimant" means a person who has filed a claim for a refund or  
17 credit under the provisions of this act and was, during the entire calendar  
18 year preceding the calendar year in which the claim was filed for relief  
19 under this act, domiciled in this state, was a member of a household, had  
20 income of not more than \$36,700 in the calendar year for which a claim  
21 was filed and was: (1) A person having a disability; (2) a person other than  
22 a person included under (1), who has attained 55 years of age in the  
23 calendar year for which a claim is filed; or (3) a person other than a person  
24 included under (1) or (2) having one or more dependent children under 18  
25 years of age residing at the person's homestead during the calendar year  
26 for which a claim is filed.

27 (d) "Head of household" means the person filing a claim under the  
28 provisions of this act.

29 (e) "Disability" means: (1) Inability to engage in any substantial  
30 gainful activity by reason of any medically determinable physical or  
31 mental impairment which can be expected to result in death or has lasted  
32 or can be expected to last for a continuous period of not less than 12  
33 months, and an individual shall be determined to be under a disability only  
34 if the physical or mental impairment or impairments are of such severity  
35 that the individual is not only unable to do the individual's previous work,

1 but cannot, considering age, education and work experience, engage in any  
2 other kind of substantial gainful work which exists in the national  
3 economy, regardless of whether such work exists in the immediate area in  
4 which the individual lives or whether a specific job vacancy exists for the  
5 individual, or whether the individual would be hired if application was  
6 made for work. For purposes of the preceding sentence (with respect to  
7 any individual), "work which exists in the national economy" means work  
8 which exists in significant numbers either in the region where the  
9 individual lives or in several regions of the country; for purposes of this  
10 subsection, a "physical or mental impairment" is an impairment that results  
11 from anatomical, physiological or psychological abnormalities which are  
12 demonstrable by medically acceptable clinical and laboratory diagnostic  
13 techniques; or

14 (2) blindness and inability by reason of blindness to engage in  
15 substantial gainful activity requiring skills or abilities comparable to those  
16 of any gainful activity in which the individual has previously engaged with  
17 some regularity and over a substantial period of time.

18 (f) "Blindness" means central visual acuity of  $^{20}/_{200}$  or less in the better  
19 eye with the use of a correcting lens. An eye which is accompanied by a  
20 limitation in the fields of vision such that the widest diameter of the visual  
21 field subtends an angle no greater than 20 degrees shall be considered for  
22 the purpose of this paragraph as having a central visual acuity of  $^{20}/_{200}$  or  
23 less.

24 Sec. 3. The right to file a claim for a refund under the food sales tax  
25 refund act shall be personal to the claimant and shall not survive the  
26 claimant's death, but such right may be exercised on behalf of a claimant  
27 by the claimant's legal guardian, conservator or attorney-in-fact. When a  
28 claimant dies after having filed a timely claim the amount thereof shall be  
29 disbursed to another member of the household as determined by the  
30 director of taxation. If the claimant was the only member of the claimant's  
31 household, the claim may be paid to the claimant's executor or  
32 administrator, but if neither is appointed and qualified, the amount of the  
33 claim may be paid upon a claim duly made to any heir at law. In the  
34 absence of any such claim within two years of the filing of the claim, the  
35 amount of the claim shall escheat to the state.

36 Sec. 4. (a) (1) A claimant shall be entitled to a refund of retailers'  
37 sales taxes paid upon food during the calendar year 2013 and each year  
38 thereafter in the amount hereinafter provided. There shall be allowed for  
39 each member of a household of a claimant having income of \$18,350 or  
40 less, an amount equal to \$94. There shall be allowed for each member of a  
41 household of a claimant having income of more than \$18,350 but not more  
42 than \$36,700, an amount equal to \$47. There shall be allowed for a  
43 claimant who qualifies for an additional personal exemption amount

1 pursuant to K.S.A. 79-32,121, and amendments thereto, an additional  
2 amount of \$47 to \$94, as the case requires. All such claims shall be paid  
3 from the sales tax refund fund upon warrants of the director of accounts  
4 and reports pursuant to vouchers approved by the director of taxation or by  
5 a person or persons designated by the director.

6 (2) As an alternative to the procedure described in subsection (a)(1),  
7 for all taxable years commencing after December 31, 2012, there shall be  
8 allowed as a credit against the tax liability of a resident individual imposed  
9 under the Kansas income tax act an amount equal to \$47 or \$94, as the  
10 case requires, for each member of a household. There shall be allowed for  
11 a claimant who qualifies for an additional personal exemption amount  
12 pursuant to K.S.A. 79-32,121, and amendments thereto, an additional  
13 amount of \$47 or \$94, as the case requires. If the amount of such tax credit  
14 exceeds the claimant's income tax liability for such taxable year, such  
15 excess amount shall be refunded to the claimant.

16 (b) A head of household shall make application for refunds for all  
17 members of the same household upon a common form provided for the  
18 making of joint claims. All claims paid to members of the same household  
19 shall be paid as a joint claim by means of a single warrant.

20 (c) No claim for a refund of taxes under the provisions of the food  
21 sales tax refund act shall be paid or allowed unless such claim is actually  
22 filed with and in the possession of the department of revenue on or before  
23 April 15 of the year next succeeding the year in which such taxes were  
24 paid. The director of taxation may: (1) Extend the time for filing any claim  
25 under the provisions of this act when good cause exists therefor; or (2)  
26 accept a claim filed after the deadline for filing in the case of sickness,  
27 absence or disability of the claimant if such claim has been filed within  
28 four years of such deadline.

29 (d) In the case of all tax years commencing after December 31, 2012,  
30 the threshold income amounts prescribed in this section and subsection (c)  
31 of section 2, and amendments thereto, and the amounts of refund of taxes  
32 and the amounts of the tax credit, both as prescribed in this section, shall  
33 be increased by an amount equal to such threshold amount multiplied by  
34 the cost-of-living adjustment determined under section 1(f)(3) of the  
35 federal internal revenue code for the calendar year in which the taxable  
36 year commences.

37 Sec. 5. (a) In administering the food sales tax refund act, the division  
38 of taxation shall make available suitable forms with instructions for  
39 claimants. Copies of such forms shall also be made available to all county  
40 clerks and county treasurers in sufficient numbers to supply claimants  
41 residing in their respective counties. It shall be the duty of the county clerk  
42 to assist any claimant seeking assistance in the filing of a claim under the  
43 provisions of this act. The county treasurer of each county shall mail to

1 each taxpayer with the property tax statement of such taxpayer information  
2 on the claiming of a refund of retailers' sales taxes paid upon food, which  
3 shall be provided by the secretary of revenue.

4 (b) The secretary of revenue is hereby authorized to adopt such rules  
5 and regulations as may be necessary for the administration of the  
6 provisions of this act.

7 Sec. 6. Every claimant for the refund of taxes under the provisions of  
8 the food sales tax refund act shall supply to the division in support of a  
9 claim, a valid social security number issued by the social security  
10 administration for each claimant, every household member and every  
11 dependent child, a clear statement as to whether such claimant qualifies for  
12 a refund under the provisions of section 2, and amendments thereto,  
13 reasonable proof of age or disability and household income. A claim  
14 alleging disability shall be supported by a report of the examining  
15 physician of the claimant with a statement or certificate that the applicant  
16 has a disability within the meaning of section 2, and amendments thereto.

17 Sec. 7. In any case in which it is determined that a claim was filed  
18 with fraudulent intent, the claim shall be disallowed, and, if the claim has  
19 been paid, the amount paid may be recovered by assessment as income  
20 taxes are assessed, and such assessment shall bear interest from the date of  
21 payment of the claim, until recovered, at the rate prescribed by K.S.A. 79-  
22 2968(a), and amendments thereto. The claimant in such case, and any  
23 person who assisted in the preparation or filing of such claim or supplied  
24 information upon which such claim was prepared, with fraudulent intent,  
25 shall be guilty of a class B misdemeanor.

26 Sec. 8. The director of taxation shall examine all claims for refund  
27 under the provisions of K.S.A. 79-3632 and sections 1 through 7, and  
28 amendments thereto, and shall issue final determinations thereon in the  
29 manner prescribed by K.S.A. 79-3226, and amendments thereto, relating  
30 to income taxes.

31 Sec. 9. This act shall take effect and be in force from and after its  
32 publication in the Kansas register.