

HOUSE BILL No. 2416

AN ACT concerning taxation; relating to amnesty from assessment or payment of penalties and interest on certain unpaid taxes; procedures and requirements of program; definition of doing business in state for sales and compensating tax purposes; amending K.S.A. 79-3702 and repealing the existing section.

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

New Section 1. (a) (1) Notwithstanding the provisions of any other law to the contrary, with respect to the following taxes administered by the department of revenue, an amnesty from the assessment or payment of all penalties and interest with respect to unpaid taxes or taxes due and owing shall apply upon compliance with the provisions of this section and if such tax liability is paid in full within the amnesty period, from October 1, 2003, to November 30, 2003: (A) Privilege tax under K.S.A. 79-1106 *et seq.* and amendments thereto; (B) taxes under the Kansas estate tax act, K.S.A. 2002 Supp. 79-15,100 *et seq.* and amendments thereto; (C) taxes under the Kansas income tax act, K.S.A. 79-3201 *et seq.* and amendments thereto; (D) taxes under the Kansas withholding and declaration of estimated tax act, K.S.A. 79-3294 *et seq.* and amendments thereto; (E) taxes under the Kansas cigarette and tobacco products act, K.S.A. 79-3301 *et seq.* and amendments thereto; (F) taxes under the Kansas retailers' sales tax act, K.S.A. 79-3601 *et seq.* and amendments thereto and the Kansas compensating tax act, K.S.A. 79-3701 *et seq.* and amendments thereto; (G) local sales and use taxes under K.S.A. 12-187 *et seq.* and amendments thereto; (H) liquor enforcement tax under K.S.A. 79-4101 *et seq.* and amendments thereto; (I) liquor drink tax under K.S.A. 79-41a01 *et seq.* and amendments thereto; and (J) mineral severance tax under K.S.A. 79-4216 *et seq.* and amendments thereto.

(2) Except for the Kansas privilege tax and individual and corporate income tax, amnesty shall apply only to tax liabilities due and unpaid for tax periods ending on or before December 31, 2002. For the Kansas privilege tax and individual and corporate income tax, amnesty shall apply only to tax liabilities due and unpaid for tax periods ending on or before December 31, 2001. For the eligible taxes and tax periods, amnesty shall apply to the under-reporting of such tax liabilities, the nonpayment of such taxes and the nonreporting of such tax liabilities.

(3) Amnesty shall not apply to any matter or matters for which, on or after February 6, 2003, any one of the following circumstances exist: (A) The taxpayer has received notice of the commencement of an audit; (B) an audit is in progress; (C) the taxpayer has received notice of an assessment pursuant to K.S.A. 79-2971 or 79-3643 and amendments thereto; (D) as a result of an audit, the taxpayer has received notice of a proposed or estimated assessment or notice of an assessment; (E) the time to administratively appeal an issued assessment has not yet expired; or (F) an assessment resulting from an audit, or any portion of such assessment, is pending in the administrative appeals process before the secretary or secretary's designee pursuant to K.S.A. 79-3226 or 79-3610 and amendments thereto or the board of tax appeals, or is pending in the judicial review process before any state or federal district or appellate court. Amnesty shall not apply to any matter that is the subject of an assessment, or any portion of an assessment, which has been affirmed by a reviewing state or federal district or appellate court. Amnesty shall not apply to any party to any criminal investigation or to any civil or criminal litigation that is pending in any court of the United States or this state for nonpayment, delinquency or fraud in relation to any tax imposed by the state of Kansas.

(b) Upon written application by the taxpayer, on forms prescribed by the secretary of revenue, and upon compliance with the provisions of this section, the department of revenue shall not seek to collect any penalty or interest which may be applicable with respect to taxes eligible for amnesty.

(c) Amnesty for penalties and interest shall be granted only to those eligible taxpayers who, within the amnesty period of October 1, 2003, to November 30, 2003, and in accordance with rules and regulations established by the secretary of revenue, have properly filed a tax return for each taxable period for which amnesty is requested, paid the entire balance of tax due and obtained approval of such amnesty by the department of revenue.

(d) If a taxpayer elects to participate in the amnesty program established pursuant to this section as evidenced by full payment of the tax due as established by the secretary of revenue, that election shall consti-

tute an express and absolute relinquishment of all administrative and judicial rights of appeal with respect to such tax liability. No tax payment received pursuant to this section shall be eligible for refund or credit. No payment of penalties or interest made prior to October 1, 2003, shall be eligible for amnesty.

(e) For tax returns for which amnesty has been requested, nothing in this section shall be interpreted to prohibit the department from adjusting such tax return as a result of a federal, department or other state agency audit.

(f) Fraud or intentional misrepresentation of a material fact in connection with an application for amnesty shall void such application and any waiver of penalties and interest from amnesty.

(g) Discovery of fraud relating to the underlying tax liability shall void the abatement of any liability as a result of any amnesty.

(h) The department may promulgate such rules and regulations or issue administrative guidelines as are necessary to administer the provisions of this section.

Sec. 2. K.S.A. 79-3702 is hereby amended to read as follows: 79-3702. For the purposes of this act: (a) “Purchase price” means the consideration paid or given or contracted to be paid or given by any person to the seller of an article of tangible personal property for the article purchased. The term shall include, in addition to the consideration paid or given or contracted to be paid or given, the actual cost of transportation from the place where the article was purchased to the person using the same in this state. If a cash discount is allowed and taken on the sale it shall be deducted in arriving at the purchase price.

(b) The meaning ascribed to words and phrases in K.S.A. 79-3602, and amendments thereto, insofar as is practicable, shall be applicable herein unless otherwise provided. The provisions of K.S.A. 79-3601 to 79-3625, inclusive, and amendments thereto, relating to enforcement, collection and administration, insofar as practicable, shall have full force and effect with respect to taxes imposed under the provisions of this act.

(c) “Use” means the exercise within this state by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include processing, or the sale of the property in the regular course of business, and except storage as hereinafter defined.

(d) “Storage” means any keeping or retaining in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(e) “Storage” and “use” do not include the keeping, retaining or exercising of any right or power over tangible personal property shipped or brought into this state for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

(f) “Property used in processing” means: (1) Any tangible personal property which, when used in fabrication, compounding, manufacturing or germination, becomes an integral part of the new article resulting from such fabrication, compounding, manufacturing, or germination, and intended to be sold ultimately at retail; (2) fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

(g) “Retailer” means every person engaged in the business of selling tangible personal property for use within the meaning of this act, except that, when in the opinion of the director it is necessary for the efficient administration of this act to regard any salesperson, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this act.

(h) (1) “Retailer doing business in this state” or any like term, means:

~~(A) Any retailer: (1) having or maintaining within in this state, permanently, temporarily, directly or by indirectly through a subsidiary, agent or representative, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within the state; (2) engaging in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system for the purpose of effecting retail sales of tangible personal property;~~

~~(B) any retailer having an employee, independent contractor, agent, representative, salesperson, canvasser or solicitor operating in this state either permanently or temporarily, under the authority of the retailer or its subsidiary, for the purpose of selling, delivering, installing, assembling, servicing, repairing, soliciting sales or the taking of orders for tangible personal property;~~

~~(C) any retailer, including a contractor, repair person or other service provider, who enters this state to perform services that are enumerated in K.S.A. 79-3603 and amendments thereto, and who is required to secure a retailer's sales tax registration certificate before performing those services;~~

~~(D) any retailer deriving rental receipts from a lease of tangible personal property situated in this state;~~

~~(E) any person having a franchisee or licensee operating under its trade name if the franchisee or the licensee is required to collect the tax under the Kansas retailers' sales tax act;~~

~~(F) any person regularly maintaining a stock of tangible personal property in this state for sale in the normal course of business; and~~

~~(G) any retailer who has any other contact with this state that would allow this state to require the retailer to collect and remit tax under the provisions of the constitution and laws of the United States.~~

~~(2) A retailer shall be presumed to be doing business in this state if:~~

~~(A) Both of the following conditions exist:~~

~~(i) The retailer holds a substantial ownership interest in, or is owned in whole substantial part by, a retailer maintaining a sales location in Kansas; and~~

~~(ii) the retailer sells the same or a substantially similar line of products as the related Kansas retailer and does so under the same or a substantially similar business name, or the Kansas facilities or Kansas employees of the related Kansas retailer are used to advertise, promote or facilitate sales by the retailer to consumers.~~

~~(B) The retailer holds a substantial ownership interest in, or is owned in whole or in substantial part by, a business that maintains a distribution house, sales house, warehouse or similar place of business in Kansas that delivers property sold by the retailer to consumers.~~

~~(C) For purposes of paragraphs (A) and (B):~~

~~(i) "Substantial ownership interest" means an interest in an entity that is not less than the degree of ownership of equity interest in an entity that is specified by Section 78p of Title 15 of the United States Code, or any successor to that statute, with respect to a person other than a director or officer; and~~

~~(ii) "ownership" means and includes both direct ownership, and indirect ownership through a parent, subsidiary or affiliate.~~

~~(3) The processing of orders electronically, by fax, telephone, the internet or other electronic ordering process, does not relieve a retailer of responsibility for collection of the tax from the purchaser if the retailer is doing business in this state pursuant to this section.~~

~~(i) "Director" means the director of taxation.~~

New Sec. 3. When tangible personal property is delivered by an owner or former owner thereof, or by a factor, or agent of that owner, former owner or factor to a consumer, pursuant to a retail sale made by a retailer who has not been issued a registration certificate pursuant to K.S.A. 79-3608 and amendments thereto, or a permit issued pursuant to

K.S.A. 79-3705d and amendments thereto, the person making the delivery shall be deemed the retailer of that property. Such person shall include the retail selling price of the property in such person's gross receipts. As used in this section, "factor" means either an agent who is employed to sell property for the principal and who is vested with possession or control of the property or a person who receives and sells goods for a commission. This section shall be part of and supplemental to the Kansas retailers' sales tax act.

Sec. 4. K.S.A. 79-3702 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

\_\_\_\_\_  
HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*