

HOUSE BILL No. 2430

By Committee on Taxation

3-11

AN ACT concerning taxation; relating to interest on overpayments; periods of limitation on refunds or credits; amending K.S.A. 79-2968 and K.S.A. 2002 Supp. 79-3230, 79-32,105 and 79-3609 and repealing the existing sections.

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

Section 1. K.S.A. 79-2968 is hereby amended to read as follows: 79-2968. (a) Except as otherwise specifically provided by law, whenever interest is charged under any law of this state upon any delinquent or unpaid taxes levied or imposed by the state of Kansas or any taxing subdivision thereof, ~~or whenever interest is allowed under any law of this state upon any overpayment of taxes levied or imposed by the state of Kansas or any taxing subdivision thereof,~~ the rate thereof shall be: ~~(a)~~ (1) One and one-half percent per month for any period prior to January 1, 1995, 1% per month for the period commencing on January 1, 1995, and ending on December 31, 1997, and $\frac{1}{12}$ of the annual rate prescribed in subsection ~~(b)~~ (a)(2) thereafter, if computed monthly; and ~~(b)~~ (2) eighteen percent per annum for any period prior to January 1, 1995, 12% per annum for the period commencing on January 1, 1995, and ending on December 31, 1997, and for any period thereafter, the underpayment rate per annum prescribed and determined under paragraph (2) of subsection (a) of section 6621, without regard to subsection (c) thereof, of the federal internal revenue code, as in effect on September 1, 1996, and which rate is in effect thereunder on July 1 of the year immediately preceding the calendar year for which the rate is being annually fixed hereunder, plus one percentage point, if computed annually.

(b) In the event the interest rate prescribed under this section cannot be determined by reference to section 6621 of the federal internal revenue code, as in effect on September 1, 1996, the rate at which interest shall be collected on underpayments shall be the rate prescribed by K.S.A. 16-204, and amendments thereto, for interest on judgments for the applicable period.

(c) *Except as otherwise specifically provided by law, whenever interest is allowed under any law of this state upon any overpayment of taxes levied or imposed by the state of Kansas or any taxing subdivision thereof,*

1 *the rate shall be 2% per annum.*

2 Sec. 2. K.S.A. 2002 Supp. 79-3230 is hereby amended to read as
3 follows: 79-3230. (a) The amount of income taxes imposed by this act
4 shall be assessed within three years after the original return was filed, the
5 tax as shown to be due on the return was paid or within one year after
6 an amended return is filed, whichever is the later date, and no proceed-
7 ings in court for the collection of such taxes shall be begun after the
8 expiration of such period. For purposes of this act any return filed before
9 the 15th day of the fourth month following the close of the taxable year
10 shall be considered as being filed on the 15th day of the fourth month
11 following the close of the taxable year, and any tax shown to be due on
12 the return and paid before the 15th day of the fourth month following
13 the close of the taxable year shall be deemed to have been paid on the
14 15th day of the fourth month following the close of the taxable year.

15 (b) In the case of a false or fraudulent return with intent to evade
16 tax, the tax may be assessed, or a proceeding in court for collection of
17 such tax may be begun at any time.

18 (c) No claim shall be allowed for credit or refund of overpayment of
19 any tax imposed by this act unless filed by the taxpayer within ~~three years~~
20 *one year* from the date the original return was filed or ~~two years~~ *one year*
21 from the date the tax claimed to be refunded or against which the credit
22 is claimed was paid, whichever of such periods expires later, or if no return
23 was filed by the taxpayer, within ~~two years~~ *one year* from the date the tax
24 claimed to be refunded or against which the credit is claimed was paid.
25 Where the assessment of any income tax imposed by this act has been
26 made within the period of limitation properly applicable thereto, such tax
27 may be collected by distraint or by a proceeding in court, but only if
28 begun within one year after the period of limitation as defined in this act.

29 (d) In case a taxpayer has made claim for a refund, the taxpayer shall
30 have the right to commence a suit for the recovery of the refund at the
31 expiration of six months after the filing of the claim for refund, if no action
32 has been taken by the director of taxation.

33 (e) Before the expiration of time prescribed in this section for the
34 assessment of additional tax or the filing of a claim for a refund, the
35 director of taxation is authorized to enter into an agreement in writing
36 with the taxpayer consenting to the extension of the periods of limitations
37 as defined in this act for the assessment of tax or for the filing of a claim
38 for refund, at any time prior to the expiration of the period of limitations.
39 The period so agreed upon may be extended by subsequent agreements
40 in writing made before the expiration of the period previously agreed
41 upon. A copy of all such agreements and extensions thereof shall be filed
42 with the director of taxation within 30 days after their execution.

43 (f) Any taxpayer whose income has been adjusted by the federal in-

1 ternal revenue service or by the income tax collection agency of another
2 state is required to report such adjustments to the Kansas department of
3 revenue by mail within 180 days of the date the federal or other state
4 adjustments are paid, agreed to or become final, whichever is earlier.
5 Such adjustments shall be reported by filing an amended return for the
6 applicable taxable year and a copy of the federal or state revenue agent's
7 report detailing such adjustments. In the event such taxpayer is a cor-
8 poration, such report shall be by certified or registered mail.

9 Notwithstanding the provisions of subsection (a) or (c) of this section,
10 additional income taxes may be assessed and proceedings in court for
11 collection of such taxes may be commenced and any refund or credit may
12 be allowed by the director of taxation within 180 days following receipt
13 of any such report of adjustments by the Kansas department of revenue,
14 or within ~~two years~~ *one year* from the date the tax claimed to be refunded
15 or, against which the credit is claimed was paid, whichever period expires
16 later. No assessment shall be made nor any refund or credit shall be
17 allowable under the provisions of this paragraph except to the extent the
18 same is attributable to changes in the taxpayer's income due to adjust-
19 ments indicated by such report.

20 (g) In the event of failure to comply with the provisions of this section,
21 the statute of limitations shall be tolled.

22 Sec. 3. K.S.A. 2002 Supp. 79-32,105 is hereby amended to read as
23 follows: 79-32,105. (a) The director shall remit the entire amount col-
24 lected under the provisions of this act and from the income tax imposed
25 upon individuals, corporations, estates or trusts pursuant to the "Kansas
26 income tax act" less amounts withheld as provided in subsection (b) and
27 any amounts credited to the IMPACT program repayment fund or the
28 IMPACT program services fund under K.S.A. 74-50,107 and amend-
29 ments thereto to the state treasurer in accordance with the provisions of
30 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
31 remittance, the state treasurer shall deposit the entire amount in the state
32 treasury to the credit of the state general fund.

33 (b) A revolving fund, designated as "income tax refund fund" not to
34 exceed \$4,000,000 shall be set apart and maintained by the director from
35 income tax collections, withholding tax collections, and estimated tax col-
36 lections and held by the state treasurer for prompt payment of all income
37 tax refunds, for the payment of interest as provided in subsection (e), for
38 payment of homestead property tax refunds in accordance with the home-
39 stead property tax refund act and for payment of property tax refunds
40 allowed pursuant to the provisions of K.S.A. 2002 Supp. 79-255, and
41 amendments thereto. The fund shall be in such amount, within the limit
42 set by this section, as the director determines is necessary to meet current
43 refunding requirements under this act.

1 (c) If the director discovers from the examination of the return, or
2 upon claim duly filed by the taxpayer or upon final judgment of the court
3 that the income tax, withholding tax, declaration of estimated tax or any
4 penalty or interest paid by or credited to any taxpayer is in excess of the
5 amount legally due for such tax or any other tax owed the state of Kansas,
6 the director shall certify to the director of accounts and reports the name
7 of the taxpayer, the amount of refund and such other information as the
8 director may require. Upon receipt of such certification the director of
9 accounts and reports shall issue a warrant on the state treasurer for the
10 payment to the taxpayer out of the fund provided in subsection (b), except
11 that no refund shall be made for a sum less than \$5, but such amount
12 may be claimed by the taxpayer as a credit against the taxpayer's tax
13 liability in the taxpayer's next succeeding taxable year.

14 (d) When a resident taxpayer dies, and the director determines that
15 a refund is due the claimant not in excess of \$100, the director shall certify
16 to the director of accounts and reports the name and address of the
17 claimant entitled to the refund and the amount of the refund. A refund
18 may be made upon a claim duly made on behalf of the estate of the
19 deceased or in the absence of any such claim upon a claim by a surviving
20 spouse and if none upon the claim by any heir at law. Upon receipt of
21 such certification the director of accounts and reports shall issue a warrant
22 on the state treasurer for the payment to the claimant out of the fund
23 provided in subsection (b).

24 (e) Interest shall be allowed and paid at the rate of 12% per annum
25 upon any overpayment of the income tax imposed upon individuals, cor-
26 porations, estates or trusts pursuant to the Kansas income tax act for any
27 period prior to January 1, 1995, 6% per annum for the period commenc-
28 ing on January 1, 1995, and ending on December 31, 1997, and at the
29 rate prescribed and determined pursuant to K.S.A. 79-2968, and amend-
30 ments thereto, for any period thereafter.

31 For the purposes of this subsection:

32 (1) Any return filed before the last day prescribed for the filing
33 thereof shall be considered as filed on such last day, determined without
34 regard to any extension of time granted the taxpayer;

35 (2) any tax paid by the taxpayer before the last day prescribed for its
36 payment, any income tax withheld from the taxpayer during any calendar
37 year and any amount paid by the taxpayer as estimated income tax for a
38 taxable year shall be deemed to have been paid on the last day prescribed
39 for filing the return for the taxable year to which such amount constitutes
40 a credit or payment, determined without regard to any extension of time
41 granted the taxpayer;

42 (3) if any overpayment of tax results from a carryback of a net oper-
43 ating loss or net capital loss, such overpayment shall be deemed not to

1 have been made prior to the close of the taxable year in which such net
2 operating loss or net capital loss arises. For purposes of this paragraph,
3 the return for the loss year shall not be deemed to be filed before claim
4 for such overpayment is filed;

5 (4) in the case of a credit, interest shall be allowed and paid from the
6 date of the overpayment to the due date of the amount against which the
7 credit is taken, except that if any overpayment of income tax is claimed
8 as a credit against estimated tax for the succeeding taxable year, such
9 amount shall be considered as a payment of the income tax for the suc-
10 ceeding taxable year, whether or not claimed as a credit in the return of
11 estimated tax for such succeeding taxable year, and no interest shall be
12 allowed or paid in such overpayment for the taxable year in which the
13 overpayment arises;

14 (5) in the case of a tax return, *including any original or amended tax*
15 *return*, which is filed after the last date prescribed for filing ~~such the~~
16 *original* return, determined with regard to extensions, no interest shall
17 be allowed or paid for any period before the date on which the return
18 *claiming the refund* is filed;

19 (6) in the case of a refund, *except as otherwise provided in this sub-*
20 *section*, interest shall be allowed and paid from the date of the overpay-
21 ment to a date preceding the date of the refund check by not more than
22 30 days, as determined by the director, whether or not such refund check
23 is accepted by the taxpayer after tender of such check to the taxpayer,
24 but acceptance of such check shall be without prejudice to any right of
25 the taxpayer to claim any additional overpayment and interest thereon;
26 and

27 (7) if any overpayment is refunded within ~~two~~ six months after the
28 last date prescribed, or permitted by extension of time, for filing the
29 *original* return of such tax, or within ~~two~~ six months after the *original or*
30 *amended* return was filed, whichever is later, no interest shall be allowed
31 or paid. For the purposes of this section, an overpayment shall be deemed
32 to have been refunded at the time the refund check in the amount of the
33 overpayment, plus any interest due thereon, is deposited in the United
34 States mail.

35 Sec. 4. K.S.A. 2002 Supp. 79-3609 is hereby amended to read as
36 follows: 79-3609. (a) Every person engaged in the business of selling tan-
37 gible personal property at retail or furnishing services taxable in this state,
38 shall keep records and books of all such sales, together with invoices, bills
39 of lading, sales records, copies of bills of sale and other pertinent papers
40 and documents. Such books and records and other papers and documents
41 shall, at all times during business hours of the day, be available for and
42 subject to inspection by the director, or the director's duly authorized
43 agents and employees, for a period of three years from the last day of the

1 calendar year or of the fiscal year of the retailer, whichever comes later,
2 to which the records pertain. Such records shall be preserved during the
3 entire period during which they are subject to inspection by the director,
4 unless the director in writing previously authorizes their disposal. Any
5 person selling tangible personal property or furnishing taxable services
6 shall be prohibited from asserting that any sales are exempt from taxation
7 unless the retailer has in the retailer's possession a properly executed
8 exemption certificate provided by the consumer claiming the exemption.
9 Any retailer asserting a claim that certain sales are exempt who does not
10 have the required exemption certificates in possession shall acquire such
11 certificates within 60 days after receiving notice from the director that
12 such certificates are required. If such certificates are not obtained within
13 the period set forth herein, the sales shall be deemed to be taxable sales
14 under this act.

15 (b) The amount of tax imposed by this act is to be assessed within
16 three years after the return is filed, and no proceedings in court for the
17 collection of such taxes shall be begun after the expiration of such period.
18 In the case of a false or fraudulent return with intent to evade tax, the
19 tax may be assessed or a proceeding in court for collection of such tax
20 may be begun at any time, within two years from the discovery of such
21 fraud. No assessment shall be made for any period preceding the date of
22 registration of the retailer by more than three years except in cases of
23 fraud. No refund or credit shall be allowed by the director after ~~three~~
24 ~~years~~ *one year* from the date of payment of the tax as provided in this act
25 unless before the expiration of such period a claim therefor is filed by the
26 taxpayer, and no suit or action to recover on any claim for refund shall
27 be commenced until after the expiration of six months from the date of
28 filing a claim therefor with the director.

29 (c) Before the expiration of time prescribed in this section for the
30 assessment of additional tax or the filing of a claim for refund, the director
31 is hereby authorized to enter into an agreement in writing with the tax-
32 payer consenting to the extension of the periods of limitations for the
33 assessment of tax or for the filing of a claim for refund, at any time prior
34 to the expiration of the period of limitations. The period so agreed upon
35 may be extended by subsequent agreements in writing made before the
36 expiration of the period previously agreed upon. In consideration of such
37 agreement or agreements, interest due in excess of 48 months on any
38 additional tax shall be waived.

39 (d) For all taxable periods subject to assessment on January 1, 1998,
40 including periods subject to an agreement to extend the statute of limita-
41 tions, and for all taxable periods commencing after December 31, 1997,
42 interest at the rate prescribed by K.S.A. 79-2968, and amendments
43 thereto, shall be allowed on any overpayment of tax computed from the

1 due date of the return if it was timely filed and accompanied by the tax
2 due or, if the return was not timely filed, from the date of payment, except
3 that no interest shall be allowed on any such refund if the same is paid
4 within 60 days after the date of the return or the date of payment, as the
5 case requires.

6 (e) Notwithstanding any other provision of this section or the provi-
7 sions of the Kansas compensating tax act:

8 (1) (A) Any claim for refund of tax imposed by the Kansas retailers'
9 sales tax act or the Kansas compensating tax act based upon the provisions
10 of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment
11 by this act which is without dispute shall be allowed, but, with respect to
12 any claim exceeding \$10,000, the refund associated therewith shall not
13 be paid until after 510 days from the date such claim was filed and shall
14 not include interest from such date. As used in this subparagraph, a claim
15 for refund without dispute shall not include any claim the basis for which
16 is a judicial or quasi-judicial interpretation of such subsection occurring
17 after the effective date of this act.

18 (B) Any refund of tax resulting from a final determination or adju-
19 dication with regard to any claim submitted or to be submitted for refund
20 of tax imposed by the Kansas retailers' sales tax act or the Kansas com-
21 pensating tax act based upon the provisions of subsection (kk) of K.S.A.
22 79-3606 in existence prior to its amendment by this act not described by
23 subparagraph (A) shall, with respect to any refund exceeding \$50,000, be
24 paid in equal annual installments over 10 years commencing with the year
25 of such final determination or adjudication. Interest shall not accrue dur-
26 ing the time period of such payment.

27 (2) No claim for refund of tax imposed by the Kansas retailers' sales
28 tax act or the Kansas compensating tax act based upon the application of
29 the provisions of subsection (n) of K.S.A. 79-3606 pursuant to its inter-
30 pretation by the court of appeals of the state of Kansas in its opinion filed
31 on August 13, 1999, in the case entitled In re appeal of Water District
32 No. 1 of Johnson County shall be allowed for tax paid prior to the effective
33 date of this act. The provisions of this subsection shall not be applicable
34 to Water District No. 1 of Johnson county.

35 New Sec. 5. (a) Notwithstanding any other provision of this section
36 or the provisions of the Kansas retailers' sales tax act or the Kansas com-
37 pensating tax act, no claim for refund of state or local sales or use tax
38 imposed by the: (1) Kansas retailers' sales tax act; (2) the Kansas com-
39 pensating tax act; or (3) K.S.A. 12-187 *et seq.*, and amendments thereto,
40 based upon the provisions of any exemption from sales tax set forth in
41 K.S.A. 79-3606 and amendments thereto or any exclusion from the im-
42 position of sales tax set forth in K.S.A. 79-3603 and amendments thereto
43 shall be allowed for any tax paid before the effective date of this act.

1 (b) For the purposes of this section, “refund” shall include tax re-
2 funds, credits, offset of taxes and all other similar devices that allow the
3 repayment of sales or use taxes that have been collected by or remitted
4 to the state of Kansas. For the purposes of this section, a tax shall be
5 deemed paid on the date it is paid to the retailer or it is remitted to the
6 state of Kansas, whichever date is earlier.

7 New Sec. 6. (a) Notwithstanding any other provision of this section
8 or the provisions of the Kansas income tax act, no claim for refund of tax
9 imposed by the Kansas income tax act, or for any claim for refund of
10 premiums tax or privilege tax based upon the provisions concerning any
11 of the following tax credits shall be allowed for any tax paid before the
12 effective date of this act: (1) Business and job development credit under
13 K.S.A. 79-32,153, 79-32,154, 79-32,155, 79-32,156, 79-32,157, 79-32,158,
14 79-32,159, 79-32,159a, 79-32,159b, 79-32,159c, 79-32,160, 79-32,160a,
15 79-32,160b, 79-32,160c and 79-32,118, and amendments thereto;

16 (2) business machinery and equipment credit under K.S.A. 79-
17 32,206, and amendments thereto;

18 (3) community service contribution credit under K.S.A. 79-32,194,
19 79-32,195, 79-32,196, 79-32,197, 79-32,197a, 79-32,198, 79-32,199, 79-
20 32,199a and 79-32,199b, and amendments thereto;

21 (4) high performance incentive program credit under K.S.A. 74-
22 50,132 and subsection (e) of K.S.A. 79-32,160a, and amendments thereto;
23 and

24 (5) research and development credit under K.S.A. 79-32,182 and 79-
25 32,182b, and amendments thereto.

26 (b) For purposes of this section, “refund” shall include tax refunds,
27 credits, offset of taxes and all other similar devices that allow the repay-
28 ment of income, premium or privilege taxes that have been collected by
29 or remitted to the state of Kansas.

30 Sec. 7. K.S.A. 79-2968 and K.S.A. 2002 Supp. 79-3230, 79-32,105
31 and 79-3609 are hereby repealed.

32 Sec. 8. This act shall take effect and be in force from and after its
33 publication in the statute book.

34
35
36
37
38
39
40
41
42
43