

3
4 **SENATE BILL No. 279**

5
6 By Committee on Ways and Means

7
8 3-28

9
10 AN ACT concerning taxation; relating to time for payment; amending
11 K.S.A. 79-3607, 79-4220 and 79-4221 and K.S.A. 2002 Supp. 79-3298
12 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 2002 Supp. 79-3298 is hereby amended to read as
16 follows: 79-3298. (a) Every employer and payor shall remit the taxes and
17 file returns in accordance with the following provisions. (1) Whenever the
18 total amount withheld exceeds \$100,000 in any calendar year, the em-
19 ployer or payor shall remit the taxes withheld in accordance with the
20 following schedule: Each calendar month shall be divided into four re-
21 mittance periods that end on the 7th, 15th, 21st and the last day of such
22 month. If at the end of any one or all of such remittance periods the total
23 undeposited taxes equal or exceed \$667, the taxes shall be remitted within
24 three banking days. Saturdays, Sundays and legal holidays shall not be
25 treated as banking days. (2) Whenever the total amount withheld exceeds
26 \$8,000 but does not exceed \$100,000 in any calendar year, the employer
27 or payor shall remit the taxes withheld for wages paid during the first 15
28 days of any month on or before the 25th day of the month. The employer
29 or payor shall remit the taxes withheld for wages paid during the remain-
30 der of that month on or before the 10th day of the following month. (3)
31 Whenever the total amount withheld exceeds ~~\$1,200~~ \$200 but does not
32 exceed \$8,000 in any calendar year, the employer or payor shall remit the
33 taxes withheld during any month on or before the 15th day of the follow-
34 ing month. (4) ~~Whenever the total amount withheld exceeds \$200 but~~
35 ~~does not exceed \$1,200 in any calendar year, the employer or payor shall~~
36 ~~remit the taxes withheld in any calendar quarter on or before the 25th~~
37 ~~day of the first month following the end of that calendar quarter.~~ (5)
38 Whenever the total amount withheld does not exceed \$200 in any cal-
39 endar year, the employer or payor shall remit the taxes withheld during
40 that year on or before January 25 of the following year.

41 (b) Each remittance required under the provisions of subsection (a)
42 shall be accompanied by a Kansas withholding tax remittance form pre-
43 scribed and furnished by the director.

1 (c) Every employer or payor making remittances pursuant to subsection
2 (a) shall file a return on a form prescribed and furnished by the
3 director for each calendar year on or before the last day of February of
4 the following year.

5 (d) The excess of any remittance over the actual taxes withheld in any
6 withholding period shall be credited against the liability for following
7 withholding periods until exhausted. A refund shall be allowed in accordance
8 with K.S.A. 79-32,105, and amendments thereto, where an overpayment
9 cannot be adjusted by an offset against the liability for a subsequent
10 withholding period.

11 (e) Determinations of amounts withheld during a calendar year by
12 employers or payors for purposes of determining filing requirements shall
13 be made by the director upon the basis of amounts withheld by those
14 employers or payors during the preceding calendar year or by estimates
15 in cases of employers or payors having no previous withholding histories.
16 The director is hereby authorized to modify the filing schedule for any
17 employer or payor when it is apparent that the original determination was
18 inaccurate.

19 (f) Whenever the director has cause to believe that money withheld
20 by an employer or payor pursuant to this act may be converted, diverted,
21 lost, or otherwise not timely paid in accordance with this section, the
22 director shall have the power to require returns and payment from any
23 such employer or payor at any time at more frequent intervals than prescribed
24 by this section in order to secure full payment to the state of all
25 amounts withheld by such employer or payor in accordance with this act.

26 Sec. 2. K.S.A. 79-3607 is hereby amended to read as follows: 79-
27 3607. Retailers shall make returns to the director at the times prescribed
28 by this section upon forms prescribed and furnished by the director stating:
29 (1) The name and address of the retailer; (2) the total amount of
30 gross sales of all tangible personal property and taxable services rendered
31 by the retailer during the period for which the return is made; (3) the
32 total amount received during the period for which the return is made on
33 charge and time sales of tangible personal property made and taxable
34 services rendered prior to the period for which the return is made; (4)
35 deductions allowed by law from such total amount of gross sales and from
36 total amount received during the period for which the return is made on
37 such charge and time sales; (5) receipts during the period for which the
38 return is made from the total amount of sales of tangible personal property
39 and taxable services rendered during such period in the course of
40 such business, after deductions allowed by law have been made; (6) receipts
41 during the period for which the return is made from charge and
42 time sales of tangible personal property made and taxable services rendered
43 prior to such period in the course of such business, after deductions

1 allowed by law have been made; (7) gross receipts during the period for
2 which the return is made from sales of tangible personal property and
3 taxable services rendered in the course of such business upon the basis
4 of which the tax is imposed. The return shall include such other pertinent
5 information as the director may require. In making such return, the re-
6 tailer shall determine the market value of any consideration, other than
7 money, received in connection with the sale of any tangible personal prop-
8 erty in the course of the business and shall include such value in the
9 return. Such value shall be subject to review and revision by the director
10 as hereinafter provided. Refunds made by the retailer during the period
11 for which the return is made on account of tangible personal property
12 returned to the retailer shall be allowed as a deduction under subdivision
13 (4) of this section in case the retailer has theretofore included the receipts
14 from such sale in a return made by such retailer and paid taxes therein
15 imposed by this act. The retailer shall, at the time of making such return,
16 pay to the director the amount of tax herein imposed, except as otherwise
17 provided in this section. The director may extend the time for making
18 returns and paying the tax required by this act for any period not to exceed
19 60 days under such rules and regulations as the secretary of revenue may
20 prescribe. When the total tax for which any retailer is liable under this
21 act, does not exceed the sum of \$80 in any calendar year, the retailer shall
22 file an annual return on or before January 25 of the following year. ~~When~~
23 ~~the total tax liability does not exceed \$1,600 in any calendar year, the~~
24 ~~retailer shall file returns quarterly on or before the 25th day of the month~~
25 ~~following the end of each calendar quarter.~~ When the total tax liability
26 exceeds ~~\$1,600~~ \$80 in any calendar year, the retailer shall file a return
27 for each month on or before the 25th day of the following month. When
28 the total tax liability exceeds \$32,000 in any calendar year, the retailer
29 shall be required to pay the sales tax liability for the first 15 days of each
30 month to the director on or before the 25th day of that month. Any such
31 payment shall accompany the return filed for the preceding month. A
32 retailer will be considered to have complied with the requirements to pay
33 the first 15 days' liability for any month if, on or before the 25th day of
34 that month, the retailer paid 90% of the liability for that fifteen-day pe-
35 riod, or 50% of such retailer's liability in the immediate preceding cal-
36 endar year for the same month as the month in which the fifteen-day
37 period occurs computed at the rate applicable in the month in which the
38 fifteen-day period occurs, and, in either case, paid any underpayment with
39 the payment required on or before the 25th day of the following month.
40 Such retailers shall pay their sales tax liabilities for the remainder of each
41 such month at the time of filing the return for such month. Determina-
42 tions of amounts of liability in a calendar year for purposes of determining
43 filing requirements shall be made by the director upon the basis of

1 amounts of liability by those retailers during the preceding calendar year
2 or by estimates in cases of retailers having no previous sales tax histories.
3 The director is hereby authorized to modify the filing schedule for any
4 retailer when it is apparent that the original determination was inaccurate.

5 Sec. 3. K.S.A. 79-4220 is hereby amended to read as follows: 79-
6 4220. (a) The amount of the **estimated** tax payable each month under
7 the provisions of K.S.A. 79-4221, and amendments thereto, shall be due
8 and payable on or before the ~~20th~~ **25th** day of the ~~second~~ *first* month
9 following the end of the month in which the coal, oil or gas is removed
10 from the lease or production unit or mine. The tax is upon the producers,
11 as defined in K.S.A. 79-4216 *and amendments thereto*, of such coal, oil
12 or gas in the proportion to their respective beneficial interests at the time
13 of severance, but unless the operator of the lease or production unit, upon
14 written notice to the first purchaser and the director, elects to remit the
15 tax, the first purchaser of any oil or gas sold shall collect the amount of
16 the tax due from the producers, as defined by K.S.A. 79-4216 *and amend-*
17 *ments thereto*, by deducting and withholding such amount from any pay-
18 ments made by such purchaser to the operator, or such producers where
19 payment is made to same directly, and shall remit the same as provided
20 in this act. An operator of an oil or gas lease or production unit, upon
21 having given written notice to the first purchaser and the director, may
22 elect to collect and remit the tax due under this act. If an operator of an
23 oil or gas lease or production unit makes this election, such operator shall
24 collect the total amount of tax due and shall remit the same to the director.
25 The operator of a coal mine shall collect the total amount of tax due and
26 shall remit the same to the director.

27 In no event shall a producer be relieved of responsibility for the tax
28 until the same has been paid. In the event the tax shall be withheld by a
29 purchaser from payments due an operator or producer and such pur-
30 chaser fails to make payment of the tax to the state as required herein,
31 the operator or producer shall be entitled to bring an action against such
32 purchaser to recover the amount of tax so withheld together with pen-
33 alties and interest which may have accrued by failure to make such pay-
34 ment. The operator or producer shall be entitled to reasonable attorney
35 fees and court costs incurred in such action.

36 (b) The state shall have a lien on all the coal, oil or gas severed in
37 this state in the hands of the operator, any producer or the first or any
38 subsequent purchaser thereof to secure the payment of the tax. In the
39 event any person required herein to pay the tax fails to do so, the director
40 shall proceed against such person to collect the tax in the manner pro-
41 vided by K.S.A. 79-3235 and amendments thereto.

42 Sec. 4. K.S.A. 79-4221 is hereby amended to read as follows: 79-
43 4221. (a) Every purchaser or operator responsible for remitting the tax

1 imposed under the provisions of K.S.A. 79-4217, and amendments
2 thereto, on or before the ~~last 20th~~ **25th** day of the first month following
3 the end of every calendar month in which oil or gas is removed from the
4 lease or production unit, shall make a return to the director upon forms
5 prescribed and furnished by the director showing the gross quantity of
6 oil or gas purchased during the month for which the return is filed, the
7 price paid therefor, the correct name and address of the operator or other
8 person from whom the same was purchased, a full description of the
9 property in the manner prescribed by the director from which such oil
10 or gas was severed and ~~the amount of tax due on or before the 20th day~~
11 ~~of the following month~~ *such return shall be accompanied by a remittance*
12 *of the ~~full~~ estimated amount of tax due. **On the 25th day of the second***
13 *month following the month for which the estimated payment is*
14 *made, the purchaser or operator shall determine the full amount*
15 *due for such month. If the estimated payment was in excess of the*
16 *amount due, the purchaser or operator shall be entitled to take the*
17 *excess amount as a credit against the estimated amount due for the*
18 *following month. If the estimated payment was less than the amount*
19 *due, the purchaser or operator shall remit the additional amount*
20 *due, together with the estimated amount due for the following*
21 *month. If an estimated payment is less than 80% of the tax due for*
22 *the current month or 100% of the tax due for the same month of the*
23 *previous year or is not timely paid, penalty and interest as pre-*
24 *scribed by K.S.A. 79-4225 and amendments thereto shall be applied*
25 *to the amount of the underpayment.* In the case of coal the return shall
26 be made on or before the 20th day of the ~~second~~ *first* month following
27 the end of the calendar month in which the coal is removed from the
28 mine, and such return shall be accompanied by a remittance of the full
29 amount of the tax due. For the purposes of determining the amount of
30 tax to be remitted, such purchaser or operator shall compute the full
31 amount of the tax due under K.S.A. 79-4217, and amendments thereto,
32 upon all coal, oil or gas severed and removed from the lease or production
33 unit or mine during such month and shall deduct an amount equal to the
34 full amount of the tax credit allowed pursuant to K.S.A. 79-4219, and
35 amendments thereto.

36 (b) If oil or gas is removed from the lease or production unit but not
37 sold to a purchaser or if the operator elects to remit the tax as authorized
38 under K.S.A. 79-4220, and amendments thereto, or the operator is re-
39 quired to remit the tax pursuant to K.S.A. 79-4220, and amendments
40 thereto, the operator shall on or before the ~~last 20th~~ **25th** day of the first
41 month following the end of every calendar month in which oil or gas is
42 removed from the lease or production unit make a return to the director
43 upon forms prescribed and furnished by the director showing the gross

1 quantity of oil or gas removed during such month and a full description
2 of the property in the manner prescribed by the director from which the
3 same was severed. In the case of coal the return shall be made on or
4 before the 20th day of the ~~second~~ *first* month following the end of the
5 calendar month in which the coal is removed from the mine. If the coal,
6 oil or gas has not been sold by the time prescribed by K.S.A. 79-4220,
7 and amendments thereto, for the payment of the tax, the operator shall
8 remit the full amount of the tax due upon certification of the amount
9 thereof by the director. The amount of taxes to be remitted shall be
10 determined in the same manner prescribed for remittances by purchasers
11 or operators under subsection (a) of this section.

12 (c) Each monthly return required hereunder shall be filed on sepa-
13 rate forms as to product and county and lease, production unit or mine.
14 All such monthly returns shall be signed by the purchaser or operator, as
15 the case may be, or a duly authorized agent thereof.

16 (d) The director may grant a reasonable extension of time for filing
17 any return and remittance of taxes due under this act upon good cause
18 shown therefor. Interest shall be charged at the rate prescribed by sub-
19 section (a) of K.S.A. 79-2968, and amendments thereto, for the period of
20 such extension for the remittance of taxes.

21 (e) The reporting requirements of this section shall be applicable to
22 the severance and production in this state of all gas which is metered and
23 all coal and oil regardless of whether the severance and production
24 thereof is subject to or exempt from the tax imposed by K.S.A. 79-4217,
25 and amendments thereto.

26 Sec. 5. K.S.A. 79-3607, 79-4220 and 79-4221 and K.S.A. 2002 Supp.
27 79-3298 are hereby repealed.

28 Sec. 6. This act shall take effect and be in force from and after its
29 publication in the statute book.

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