

1 **As Amended by House Committee**

2 *Session of 2002*

3  
4 **HOUSE BILL No. 2706**

5  
6 By Committee on Taxation

7  
8 1-25  
9

10 AN ACT relating to taxation; enacting the Taxpayer Fairness Act of 2002;  
11 amending K.S.A. ~~79-3225, 79-3226 and 79-3607~~ and K.S.A. 2001 Supp.  
12 ~~60-2310~~ **79-3226 and 79-3650 and K.S.A. 2001 Supp. 74-2438** and  
13 repealing the existing sections.  
14

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

16 New Section 1. (a) Any correspondence issued by the department of  
17 revenue to a taxpayer or the taxpayer's representative demanding pay-  
18 ment of an assessment of any tax the imposition and collection of which  
19 is administered by the department shall consist of a detailed, clear and  
20 accurate explanation of the assessment demand including, but not limited  
21 to, the specific tax and tax year to which such assessment applies and  
22 penalties and interest which apply thereto. **If the department proposes**  
23 **to change the tax or refund due on a return filed by a taxpayer,**  
24 **correspondence detailing the change shall be sent to the taxpayer.**  
25 **The correspondence shall specifically identify the proposed**  
26 **change and explain in simple and nontechnical terms the reasons**  
27 **for the change.**

28 (b) Any such correspondence demanding the payment of an assess-  
29 ment of tax, penalties and interest in an amount in excess of ~~\$500~~ **\$750**  
30 **for individual accounts and in excess of \$2,000 for business ac-**  
31 **counts** shall be reviewed prior to issuance for accuracy by an employee  
32 of the department **and shall provide the name and contact telephone**  
33 **number of the employee performing any such review.**

34 New Sec. 2. In the event a taxpayer has designated a third party or  
35 other representative to discuss an income tax return upon the taxpayer's  
36 federal or state return form, the department shall adhere and comply  
37 with such designation, and shall ~~only discuss or~~ correspond with such  
38 designee or representative regarding matters concerning the return, **in-**  
39 **cluding collection matters.**

40 New Sec. 3. In addition to the authority to waive any civil penalty  
41 imposed by law for the violation of any law pertaining to any tax admin-  
42 istered by the department of revenue, the secretary or the secretary's  
43 designee shall waive any such penalty upon the finding of any circum-

1 stance allowing waiver of civil penalties pursuant to the federal internal  
2 revenue code, as in effect on January 1, 2002.

3 New Sec. 4. ~~In the event that the department of revenue agrees to~~  
4 ~~settle~~ **Upon a resolution of** any assessment of tax, penalties and interest  
5 of any tax the imposition and collection of which is administered by the  
6 department, a closing letter evidencing such ~~settlement~~ **resolution** shall  
7 be issued to the affected taxpayer or the taxpayer's representative, as the  
8 case may require, within 30 days of the date upon which such ~~settlement~~  
9 **resolution** is agreed to. The taxpayer shall be entitled to rely on such  
10 closing letter, and the department shall not maintain a position against  
11 such taxpayer which is inconsistent with such ~~settlement agreement~~  
12 **resolution**.

13 ~~New Sec. 5. Property exempt from levy pursuant to a federal tax lien~~  
14 ~~as described by subsection (a) of section 6334 of the federal internal~~  
15 ~~revenue code, as in effect on January 1, 2002, shall be exempt from levy~~  
16 ~~pursuant to the provisions of K.S.A. 79-3235 and 79-3617, and amend-~~  
17 ~~ments thereto. In the case of the principal residence of the taxpayer, if a~~  
18 ~~judge of the district court of the county in which such residence is located~~  
19 ~~approves in writing a levy upon such residence, it shall not be exempt.~~

20 **New Sec. 5. The secretary of revenue is hereby authorized to**  
21 **adopt rules and regulations necessary to administer and enforce,**  
22 **as provided by law, the provisions of chapters 41 and 79 of the**  
23 **Kansas Statutes Annotated. All rules and regulations of the secre-**  
24 **tary of revenue in existence on the effective date of this act shall**  
25 **continue to be in effect and shall be deemed to be rules and reg-**  
26 **ulations of the secretary until revised, amended or nullified pur-**  
27 **suant to law.**

28 New Sec. 6. (a) Notwithstanding any provision of K.S.A. 79-3235,  
29 and amendments thereto, to the contrary, the procedures set forth by  
30 this section shall apply to the issuance of any warrant and the levy upon  
31 property pursuant to such provisions.

32 (b) ~~(1)~~ The secretary or the secretary's designee shall notify in writ-  
33 ing the person who is the subject of the warrant of the filing of a warrant  
34 under K.S.A. 79-3235, and amendments thereto. The notice required  
35 shall be given in person, left at the dwelling or usual place of business of  
36 such person or sent by certified or registered mail to such person's last  
37 known address, not more than five business days after the day of the filing  
38 of the notice of lien. The notice shall include in simple and nontechnical  
39 terms the amount of unpaid taxes, ~~the right of the person to request a~~  
40 ~~hearing during the 30-day period beginning on the day after the five-day~~  
41 ~~period described above,~~ the administrative appeals available to the tax-  
42 payer with respect to such warrant and the procedures relating to such  
43 appeals, and the provisions of law and procedures relating to the release

1 of warrants on property.

2 ~~(2) If the person requests a hearing, such hearing shall be held by~~  
3 ~~the secretary or the secretary's designee. A person shall be entitled to~~  
4 ~~only one hearing under this section with respect to the taxable period to~~  
5 ~~which the unpaid tax relates. The hearing shall be conducted by an officer~~  
6 ~~or employee who has had no prior involvement with respect to the unpaid~~  
7 ~~tax. A taxpayer may waive the requirement of the preceding sentence. To~~  
8 ~~the extent practicable, a hearing under this section shall be held in con-~~  
9 ~~junction with a hearing under subsection (c). For purposes of this sub-~~  
10 ~~section, paragraphs (3), (4) and (5) of subsection (c) shall apply.~~

11 ~~—(c) (1) No levy may be made on any property or right to property of~~  
12 ~~any person unless the secretary or secretary's designee has notified such~~  
13 ~~person in writing of their right to a hearing under this subsection before~~  
14 ~~such levy is made. Such notice shall be required only once for the taxable~~  
15 ~~period to which the unpaid tax relates. The notice required shall be given~~  
16 ~~in person, left at the dwelling or usual place of business of such person~~  
17 ~~or sent by certified or registered mail, return receipt requested, to such~~  
18 ~~person's last known address, not less than 30 days before the day of the~~  
19 ~~first levy with respect to the amount of the unpaid tax for the taxable~~  
20 ~~period. The notice required shall include in simple and nontechnical~~  
21 ~~terms the amount of unpaid tax, the right of the person to request a~~  
22 ~~hearing during the 30-day period, and the proposed action by the sec-~~  
23 ~~retary and the rights of the person with respect to such action, including~~  
24 ~~a brief statement which sets forth the provisions of law relating to levy~~  
25 ~~and sale of property, the procedures applicable to the levy and sale of~~  
26 ~~property under law, the administrative appeals available to the taxpayer~~  
27 ~~with respect to such levy and sale and the procedures relating to such~~  
28 ~~appeals, the alternatives available to taxpayers which could prevent levy~~  
29 ~~on property and the provisions of law and procedures relating to re-~~  
30 ~~demption of property and release of warrants on property.~~

31 ~~—(2) If the person requests a hearing such hearing shall be held by the~~  
32 ~~secretary or the secretary's designee. A person shall be entitled to only~~  
33 ~~one hearing with respect to the taxable period to which the unpaid tax~~  
34 ~~relates. The hearing shall be conducted by an officer or employee who~~  
35 ~~has had no prior involvement with respect to the unpaid tax. A taxpayer~~  
36 ~~may waive the requirement of the preceding sentence. In the case of any~~  
37 ~~hearing conducted under this subsection:~~

38 ~~—(3) (A) The hearing officer shall at the hearing obtain verification~~  
39 ~~from the secretary or secretary's designee that the requirements of any~~  
40 ~~applicable law or administrative procedure have been met. The person~~  
41 ~~may raise at the hearing any relevant issue relating to the unpaid tax or~~  
42 ~~the proposed levy, including appropriate spousal defenses, challenges to~~  
43 ~~the appropriateness of collection actions and offers of collection alter-~~

1 natives, which may include the posting of a bond, the substitution of other  
2 assets, an installment agreement or an offer-in-compromise. The person  
3 may also raise at the hearing challenges to the existence or amount of the  
4 underlying tax liability for any tax period if the person did not receive any  
5 statutory notice of deficiency for such tax liability or did not otherwise  
6 have an opportunity to dispute such tax liability.

7 ~~—(B) The determination by an appeals officer under this subsection~~  
8 ~~shall take into consideration the verification presented, the issues raised~~  
9 ~~and whether any proposed collection action balances the need for the~~  
10 ~~efficient collection of taxes with the legitimate concern of the person that~~  
11 ~~any collection action be no more intrusive than necessary.~~

12 ~~—(C) An issue may not be raised at the hearing if the issue was raised~~  
13 ~~and considered at a previous hearing under subsection (b) or in any other~~  
14 ~~previous administrative or judicial proceeding, and the person seeking to~~  
15 ~~raise the issue participated meaningfully in such hearing or proceeding.~~

16 ~~—(4) The person, within 30 days of a determination under this section,~~  
17 ~~may appeal such determination to the board of tax appeals, and the board~~  
18 ~~of tax appeals shall have jurisdiction to hear such matter.~~

19 ~~—(5) (A) Except as provided in paragraph (B), if a hearing is requested,~~  
20 ~~the levy actions which are the subject of the requested hearing and the~~  
21 ~~running of any period of limitations shall be suspended for the period~~  
22 ~~during which such hearing, and appeals therein, are pending. In no event~~  
23 ~~shall any such period expire before the 90th day after the day on which~~  
24 ~~there is a final determination in such hearing.~~

25 ~~—(B) Paragraph (A) shall not apply to a levy action while an appeal is~~  
26 ~~pending if the underlying tax liability is not at issue in the appeal and the~~  
27 ~~court determines that the secretary has shown good cause not to suspend~~  
28 ~~the levy.~~

29 ~~—(6) If the secretary has made a finding under K.S.A. 79-3229, and~~  
30 ~~amendments thereto, that the collection of tax is in jeopardy, this section~~  
31 ~~shall not apply, except that the taxpayer shall be given the opportunity~~  
32 ~~for the hearing described in this section within a reasonable period of~~  
33 ~~time after the levy.~~

34 ~~—New Sec. 7. (a) (1) Any taxpayer, such taxpayer's heirs or legal rep-~~  
35 ~~resentative may petition the secretary to abate all or part of any final~~  
36 ~~retailers' sales or compensating tax liability of the taxpayer. As used in~~  
37 ~~this section, "tax liability," "tax" or "liability" shall include the amount of~~  
38 ~~tax due and the penalties and interest thereon. The petition shall be in~~  
39 ~~writing and shall set forth: (A) The reasons why all or part of the liability~~  
40 ~~should be abated; (B) the facts that support such an abatement; and (C)~~  
41 ~~a waiver of the taxpayer's right to confidentiality under the confidentiality~~  
42 ~~provisions of chapter 79 of the Kansas Statutes Annotated, conditioned~~  
43 ~~on the secretary's abatement of all or part of the liability. A petition shall~~

1 be accompanied by a sworn statement of the taxpayer's assets and liabil-  
2 ities, whenever the petition is based on insolvency or inability to pay. The  
3 petition shall be signed under penalty of perjury by the petitioner and by  
4 the taxpayer, if available. A petition for the abatement of a final liability  
5 shall not operate to stay the collection of any tax.

6 —(2)—The secretary shall review each petition and may: (A) Issue a de-  
7 termination that rejects the petition without further comment; (B) re-  
8 quire the petitioner to submit additional verified documentation in sup-  
9 port of the abatement; or (C) require the petitioner and the taxpayer to  
10 appear and testify under oath concerning the abatement. If the secretary  
11 finds that there is serious doubt as to either the collectability of the tax  
12 due or the taxpayer's liability, the secretary may abate all or part of the  
13 tax liability. If the secretary abates any tax liability, the secretary shall  
14 make a written finding that determines the tax amount the taxpayer  
15 should reasonably be required to pay, and sets forth the reasons for the  
16 abatement being made. Such a finding may require payment to be made  
17 as directed within 30 days as a condition for the abatement. If at any time  
18 within four years following the entry of such a finding, the secretary finds  
19 that the petition is fraudulent, the matter may be reopened by the sec-  
20 retary and the taxpayer shall be subject to the tax liability to the same  
21 extent as if such abatement had not been made.

22 —(3)—No taxpayer shall have a right to the abatement of any tax liability  
23 under this section. Any decision by the secretary regarding the abatement  
24 of a final tax liability shall be discretionary and may only be made upon  
25 finding there is serious doubt either as to the collectability of the tax due  
26 or the taxpayer's liability. Any order or finding shall be final and conclusive  
27 and shall not be subject to review under K.S.A. 74-2438, 77-501, *et seq.*  
28 or 79-3226, and amendments thereto.

29 —(b)—This section shall be construed as a part of and supplemental to  
30 the Kansas retailers' sales tax act.

31 —Sec. 8.—K.S.A. 2001 Supp. 60-2310 is hereby amended to read as  
32 follows: 60-2310. (a) *Definitions.* As used in this act and the acts of which  
33 this act is amendatory, unless the context otherwise requires, the follow-  
34 ing words and phrases shall have the meanings respectively ascribed to  
35 them:

36 —(1)—“Earnings” means compensation paid or payable for personal  
37 services, whether denominated as wages, salary, commission, bonus or  
38 otherwise;

39 —(2)—“disposable earnings” means that part of the earnings of any in-  
40 dividual remaining after the deduction from such earnings of any amounts  
41 required by law to be withheld;

42 —(3)—“wage garnishment” means any legal or equitable procedure  
43 through which the earnings of any individual are required to be withheld

1 for payment of any debt, and

2 —(4) “federal minimum hourly wage” means that wage prescribed by  
3 subsection (a)(1) of section 6 of the federal fair labor standards act of  
4 1938, and any amendments thereto.

5 —(b) *Restriction on wage garnishment.* Subject to the provisions of sub-  
6 section (c), only the aggregate disposable earnings of an individual may  
7 be subjected to wage garnishment. The maximum part of such earnings  
8 of any wage earning individual which may be subjected to wage garnish-  
9 ment for any workweek or multiple thereof may not exceed the lesser of:

10 (1) Twenty five percent of the individual’s aggregate disposable earnings  
11 for that workweek or multiple thereof, (2) the amount by which the in-  
12 dividual’s aggregate disposable earnings for that workweek or multiple  
13 thereof exceed an amount equal to 30 times the federal minimum hourly  
14 wage, or equivalent multiple thereof for such longer period; or (3) the  
15 amount of the plaintiff’s claim as found in the order for garnishment. No  
16 one creditor may issue more than one garnishment against the earnings  
17 of the same judgment debtor during any one 30-day period, but the court  
18 shall allow the creditor to file amendments or corrections of names or  
19 addresses of any party to the order of garnishment at any time. In an-  
20 swering such order the garnishee employer shall withhold from all earn-  
21 ings of the judgment debtor for any pay period or periods ending during  
22 such 30-day period an amount or amounts as are allowed and required  
23 by law. Nothing in this act shall be construed as charging the plaintiff in  
24 any garnishment action with the knowledge of the amount of any de-  
25 fendant’s earnings prior to the commencement of such garnishment  
26 action.

27 —(c) *Sickness preventing work.* If any debtor is prevented from work-  
28 ing at the debtor’s regular trade, profession or calling for any period  
29 greater than two weeks because of illness of the debtor or any member  
30 of the family of the debtor, and this fact is shown by the affidavit of the  
31 debtor, the provisions of this section shall not be invoked against any such  
32 debtor until after the expiration of two months after recovery from such  
33 illness.

34 —(d) *Assignment of account.* If any person, firm or corporation sells or  
35 assigns an account to any person or collecting agency, that person, firm  
36 or corporation or their assignees shall not have or be entitled to the ben-  
37 efits of wage garnishment. The provision of this subsection shall not apply  
38 to the following:

39 —(1) Assignments of support rights to the secretary of social and re-  
40 habilitation services pursuant to K.S.A. 39-700 and 39-756, and amend-  
41 ments thereto, and support enforcement actions conducted by court trust-  
42 ees pursuant to K.S.A. 23-492, *et seq.*, and amendments thereto;

43 —(2) support rights which have been assigned to any other state pur-

1 suant to title IV-D of the federal social security act (42 U.S.C. § 651 *et*  
2 *seq.*);

3 —(3)—assignments of accounts receivable or taxes receivable to the di-  
4 rector of accounts and reports made under K.S.A. 75-3728b and amend-  
5 ments thereto; or

6 —(4)—collections pursuant to contracts entered into in accordance with  
7 K.S.A. 75-719 and amendments thereto involving the collection of resti-  
8 tution or debts to district courts.

9 —(c)—*Exceptions to restrictions on wage garnishment.* The restrictions  
10 on the amount of disposable earnings subject to wage garnishment as  
11 provided in subsection (b) shall not apply in the following instances:

12 —(1)—Any order of any court for the support of any person, including  
13 any order for support in the form of alimony, but the foregoing shall be  
14 subject to the restriction provided for in subsection (g); *and*

15 (2)—any order of any court of bankruptcy under chapter XIII of the  
16 federal bankruptcy act; and

17 —(3)—any debt due for any state or federal tax.

18 (f) *Prohibition on courts.* No court of this state may make, execute  
19 or enforce any order or process in violation of this section.

20 —(g)—The maximum part of the aggregate disposable earnings of an  
21 individual for any workweek which is subject to garnishment to enforce  
22 any order for the support of any person shall not exceed:

23 —(1)—If the individual is supporting a spouse or dependent child (other  
24 than a spouse or child with respect to whose support such order is used),  
25 50% of the individual's disposable earnings for that week;

26 —(2)—if the individual is not supporting a spouse or dependent child  
27 described in clause (1), 60% of such individual's disposable earnings for  
28 that week; and

29 —(3)—with respect to the disposable earnings of any individual for any  
30 workweek, the 50% specified in clause (1) shall be 55% and the 60%  
31 specified in clause (2) shall be 65%, if such earnings are subject to gar-  
32 nishment to enforce a support order for a period which is prior to the  
33 twelve-week period which ends with the beginning of such workweek.

34 —Sec. 9. K.S.A. 79-3225 is hereby amended to read as follows: 79-  
35 3225. (a) All taxes imposed under the provisions of the "Kansas income  
36 tax act" shall be paid on the 15th day of the fourth month following the  
37 close of the taxable year. When the tax as shown to be due on a return is  
38 less than \$5 \$20, such tax shall be canceled and no payment need be  
39 remitted by the taxpayer.

40 —(b)—The director of taxation may extend the time for payment of the  
41 tax, or any installment thereof, for a reasonable period of time not to  
42 exceed six months from the date fixed for payment thereof. Such exten-  
43 sion may exceed six months in the case of a taxpayer who is abroad.

1 Interest shall be charged at the rate prescribed by *subsection (a) of K.S.A.*  
2 *79-2968(a)* and amendments thereto for the period of such extension.

3 **Sec. 7. K.S.A. 2001 Supp. 74-2438 is hereby amended to**  
4 **read as follows: 74-2438. An appeal may be taken to the state board**  
5 **of tax appeals from any finding, ruling, order, decision, final de-**  
6 **termination or other final action, including action relating to**  
7 **abatement or reduction of penalty and interest, on any case of the**  
8 **secretary of revenue or the secretary's designee by any person**  
9 **aggrieved thereby. Notice of such appeal shall be filed with the**  
10 **secretary of the board within 30 days after such finding, ruling,**  
11 **order, decision, final determination or other action on a case, and**  
12 **a copy served upon the secretary of revenue or the secretary's**  
13 **designee. An appeal may also be taken to the state board of tax appeals**  
14 **at any time when no final determination has been made by the secretary**  
15 **of revenue or the secretary's designee after 270 days has passed since the**  
16 **date of the request for informal conference pursuant to K.S.A. 79-3226,**  
17 **and amendments thereto and no written agreement by the parties to fur-**  
18 **ther extend the time for making such final determination is in effect. Upon**  
19 **receipt of a timely appeal, the board shall conduct a hearing in**  
20 **accordance with the provisions of the Kansas administrative pro-**  
21 **cedure act. The hearing before the board shall be a de novo hear-**  
22 **ing unless the parties agree to submit the case on the record made**  
23 **before the secretary of revenue or the secretary's designee. With**  
24 **regard to any matter properly submitted to the board relating to**  
25 **the determination of valuation of residential property or real prop-**  
26 **erty used for commercial and industrial purposes for taxation pur-**  
27 **poses, it shall be the duty of the county or district appraiser to**  
28 **initiate the production of evidence to demonstrate, by a prepon-**  
29 **derance of the evidence, the validity and correctness of such de-**  
30 **termination, except that no such duty shall accrue with regard to**  
31 **leased commercial and industrial property unless the property**  
32 **owner has furnished to the county or district appraiser a complete**  
33 **income and expense statement for the property for the three years**  
34 **next preceding the year of appeal. No presumption shall exist in**  
35 **favor of the county or district appraiser with respect to the validity**  
36 **and correctness of such determination. No interest shall accrue on**  
37 **the amount of the assessment of tax subject to any such appeal**  
38 **beyond 120 days after the date the matter was fully submitted,**  
39 **except that, if a final order is issued within such time period, in-**  
40 **terest shall continue to accrue until such time as the tax liability is**  
41 **fully satisfied, and if a final order is issued beyond such time pe-**  
42 **riod, interest shall recommence to accrue from the date of such**  
43 **order until such time as the tax liability is fully satisfied.**



1     Sec. ~~40~~ **8.** K.S.A. 79-3226 is hereby amended to read as follows: 79-  
2 3226. (a) As soon as practicable after the return is filed, the director of  
3 taxation shall examine it and shall determine the correct amount of the  
4 tax. If the tax found due shall be greater than the amount theretofore  
5 paid, or if a claim for a refund is denied, notice shall be mailed to the  
6 taxpayer. Within 60 days after the mailing of such notice the taxpayer may  
7 request an informal conference with the secretary of revenue or the sec-  
8 retary's designee relating to the tax liability or denial of refund by filing  
9 a written request with the secretary of revenue or the secretary's designee  
10 which sets forth the objections to the proposed liability or proposed denial  
11 of refund. *The secretary or the secretary's designee may accept or reject*  
12 *any such request submitted after such 60-day period of time.* The purpose  
13 of such conference shall be to review and reconsider all facts and issues  
14 that underlie the proposed liability or proposed denial of refund. The  
15 secretary of revenue or the secretary's designee shall hold an informal  
16 conference with the taxpayer and shall issue a written final determination  
17 thereon. The informal conference shall not constitute an adjudicative pro-  
18 ceeding under the Kansas administrative procedure act. Informal confer-  
19 ences held pursuant to this section may be conducted by the secretary of  
20 revenue or the secretary's designee. The rules of evidence shall not apply  
21 to an informal conference and no record shall be made, except at the  
22 request and expense of the secretary of revenue or the secretary's des-  
23 ignee or taxpayer. The taxpayer may bring to the informal conference an  
24 attorney, certified public accountant and any other person to represent  
25 the taxpayer or to provide information. Because the purpose of the de-  
26 partment staff is to aid the secretary or secretary's designee in the proper  
27 discharge of the secretary's or secretary's designee's duties, the secretary  
28 or secretary's designee may confer at any time with any staff member  
29 with respect to the case under reconsideration. The secretary of revenue  
30 or the secretary's designee shall issue a written final determination within  
31 270 days of the date of the request for informal conference unless the  
32 parties agree in writing to extend the time for issuing such final deter-  
33 mination. A final determination **issued within or after 270 days, with**  
34 **or without extension**, constitutes final agency action subject to admin-  
35 istrative review by the state board of tax appeals. In the event that a  
36 written final determination is not rendered within 270 days, the taxpayer  
37 may appeal to the state board of tax appeals **at any time provided that**  
38 **a written extension of time is not in effect.**

39     (b) A final determination finding additional tax shall be accompanied  
40 by a notice and demand for payment. Notice under this section shall be  
41 sent by first-class mail in the case of individual taxpayers and by registered  
42 or certified mail in the case of all other taxpayers. The tax shall be paid  
43 within 20 days thereafter, together with interest at the rate per month

1 prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto,  
2 on the additional tax from the date the tax was due unless an appeal is  
3 taken in the manner provided by K.S.A. 74-2438 and amendments  
4 thereto, but no additional tax shall be assessed for less than ~~\$5~~ **\$20** ~~\$5~~  
5 **unless the secretary or the secretary's designee determines the**  
6 **administration and collection cost involved in collecting an amount**  
7 **over \$5 but less than \$100 would not warrant collection of the**  
8 **amount due.** Interest at such rate shall continue to accrue on any ad-  
9 ditional tax liability during the course of any appeal.

10 Sec. 11. ~~K.S.A. 79-3607 is hereby amended to read as follows: 79-~~  
11 ~~3607. Retailers shall make returns to the director at the times prescribed~~  
12 ~~by this section upon forms prescribed and furnished by the director stat-~~  
13 ~~ing: (1) The name and address of the retailer, (2) the total amount of~~  
14 ~~gross sales of all tangible personal property and taxable services rendered~~  
15 ~~by the retailer during the period for which the return is made; (3) the~~  
16 ~~total amount received during the period for which the return is made on~~  
17 ~~charge and time sales of tangible personal property made and taxable~~  
18 ~~services rendered prior to the period for which the return is made; (4)~~  
19 ~~deductions allowed by law from such total amount of gross sales and from~~  
20 ~~total amount received during the period for which the return is made on~~  
21 ~~such charge and time sales; (5) receipts during the period for which the~~  
22 ~~return is made from the total amount of sales of tangible personal prop-~~  
23 ~~erty and taxable services rendered during such period in the course of~~  
24 ~~such business, after deductions allowed by law have been made; (6) re-~~  
25 ~~ceipts during the period for which the return is made from charge and~~  
26 ~~time sales of tangible personal property made and taxable services ren-~~  
27 ~~dered prior to such period in the course of such business, after deductions~~  
28 ~~allowed by law have been made; (7) gross receipts during the period for~~  
29 ~~which the return is made from sales of tangible personal property and~~  
30 ~~taxable services rendered in the course of such business upon the basis~~  
31 ~~of which the tax is imposed. The return shall include such other pertinent~~  
32 ~~information as the director may require. In making such return, the re-~~  
33 ~~tailer shall determine the market value of any consideration, other than~~  
34 ~~money, received in connection with the sale of any tangible personal prop-~~  
35 ~~erty in the course of the business and shall include such value in the~~  
36 ~~return. Such value shall be subject to review and revision by the director~~  
37 ~~as hereinafter provided. Refunds made by the retailer during the period~~  
38 ~~for which the return is made on account of tangible personal property~~  
39 ~~returned to the retailer shall be allowed as a deduction under subdivision~~  
40 ~~(4) of this section in case the retailer has theretofore included the receipts~~  
41 ~~from such sale in a return made by such retailer and paid taxes therein~~  
42 ~~imposed by this act. The retailer shall, at the time of making such return,~~  
43 ~~pay to the director the amount of tax herein imposed, except as otherwise~~

1 provided in this section. The director may extend the time for making  
2 returns and paying the tax required by this act for any period not to exceed  
3 60 days under such rules and regulations as the secretary of revenue may  
4 prescribe. *The director may accept or reject any such return submitted*  
5 *after such extension period.* When the total tax for which any retailer is  
6 liable under this act, does not exceed the sum of \$80 in any calendar year,  
7 the retailer shall file an annual return on or before January 25 of the  
8 following year. When the total tax liability does not exceed \$1,600 in any  
9 calendar year, the retailer shall file returns quarterly on or before the  
10 25th day of the month following the end of each calendar quarter. When  
11 the total tax liability exceeds \$1,600 in any calendar year, the retailer shall  
12 file a return for each month on or before the 25th day of the following  
13 month. When the total tax liability exceeds \$32,000 in any calendar year,  
14 the retailer shall be required to pay the sales tax liability for the first 15  
15 days of each month to the director on or before the 25th day of that  
16 month. Any such payment shall accompany the return filed for the pre-  
17 ceeding month. A retailer will be considered to have complied with the  
18 requirements to pay the first 15 days' liability for any month if, on or  
19 before the 25th day of that month, the retailer paid 90% of the liability  
20 for that fifteen-day period, or 50% of such retailer's liability in the im-  
21 mediate preceding calendar year for the same month as the month in  
22 which the fifteen-day period occurs computed at the rate applicable in  
23 the month in which the fifteen-day period occurs, and, in either case, paid  
24 any underpayment with the payment required on or before the 25th day  
25 of the following month. Such retailers shall pay their sales tax liabilities  
26 for the remainder of each such month at the time of filing the return for  
27 such month. Determinations of amounts of liability in a calendar year for  
28 purposes of determining filing requirements shall be made by the director  
29 upon the basis of amounts of liability by those retailers during the pre-  
30 ceeding calendar year or by estimates in cases of retailers having no pre-  
31 vious sales tax histories. The director is hereby authorized to modify the  
32 filing schedule for any retailer when it is apparent that the original de-  
33 termination was inaccurate.

34 —Sec. 12. K.S.A. 79-3225, 79-3226 and 79-3607 and K.S.A. 2001 Supp.  
35 60-2310 are hereby repealed.

36 **Sec. 9. K.S.A. 79-3650 is hereby amended to read as follows:**  
37 **79-3650. (a) A refund request may be filed directly by a consumer**  
38 **or purchaser if the consumer or purchaser: (1) paid the tax directly**  
39 **to the department; (2) provides evidence that the retailer refused**  
40 **or was unavailable to refund the tax; (3) provides evidence that the**  
41 **retailer did not act upon its refund request in a timely manner as**  
42 **provided in subsection (b), or; (4) submits such a refund request pur-**  
43 **suant to subsection (c) provides a notarized statement to the department**

1 *from the retailer that the retailer: (A) Will not claim a refund of the same*  
2 *tax included in the purchaser's or consumer's refund request; (B) agrees*  
3 *to provide to the consumer or purchaser any information or document-*  
4 *ation in the retailer's possession needed for submission to the department*  
5 *to support or prove the refund claim; (C) has remitted to the state the tax*  
6 *sought to be refunded; and (D) has not taken or will not take a credit for*  
7 *such tax. A retailer providing false information in any such statement shall*  
8 *be subject to penalties prescribed by K.S.A. 2001 Supp. 79-3615(h), and*  
9 *amendments thereto.*

10 **(b) If the director of taxation finds upon proper showing that**  
11 **a consumer or purchaser submitted a refund request to a retailer**  
12 **that was not acted upon by the retailer in a timely manner, the**  
13 **director shall extend the time for filing the request with the de-**  
14 **partment beyond the three year limitation period that is otherwise**  
15 **provided by the time attributed to the delay caused by the retailer.**

16 ~~(c) If, during the course of an audit examination of a business as a~~  
17 ~~purchaser or consumer, it is determined that a vendor has collected Kan-~~  
18 ~~sas tax from the purchaser on a transaction that is not subject to tax~~  
19 ~~imposed under this act, the purchaser may apply directly to the director~~  
20 ~~for an offset or refund of the tax, notwithstanding subsection (a), if: (1)~~  
21 ~~the purchaser is currently registered to collect and remit tax, and (2) the~~  
22 ~~purchaser provides the director with an affidavit or other acceptable doc-~~  
23 ~~umentation that assures the purchaser has not and will not request a~~  
24 ~~duplicate refund through the vendor.~~

25 **Sec. 10. K.S.A. 79-3226 and 79-3650 and K.S.A. 2001 Supp. 74-**  
26 **2438 are hereby repealed.**

27 ~~Sec. 11.~~ **11.** This act shall take effect and be in force from and after  
28 its publication in the statute book.

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