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4 **SENATE BILL No. 413**

5  
6 By Committee on Assessment and Taxation

7  
8 1-23

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10 AN ACT relating to taxation; concerning the setoff of taxpayer refunds  
11 against liabilities; amending K.S.A. 79-2015 and 79-32,104 and K.S.A.  
12 2001 Supp. 79-32,105 and repealing existing sections.

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

15 New Section 1. If the amount of any tax payment, estimated or oth-  
16 erwise, made during any calendar year or other taxable period exceeds  
17 the taxpayer's liability for which such payment was made, any excess shall  
18 be applied to any other tax then owed the state of Kansas by such taxpayer,  
19 including fines, penalties and interests, if any, and the balance of such  
20 excess, if any, shall be refunded to the taxpayer.

21 Sec. 2. K.S.A. 79-2015 is hereby amended to read as follows: 79-  
22 2015. The taxes, fees, interest and penalties, levied and assessed by any  
23 state law administered by the ~~director~~ *secretary* of revenue may be col-  
24 lected in the same manner as a personal debt of the taxpayer to the state  
25 of Kansas from the time *the* same shall become due, and shall be recov-  
26 erable in any court of competent jurisdiction in any action in the name  
27 of the state of Kansas, on relation of the ~~director~~ *secretary* of revenue *or*  
28 *the secretary's designee*. Such suit may be maintained, prosecuted, and  
29 all proceedings taken to the same effect and extent as for the enforcement  
30 of a right of action for debt. All provisional remedies available in such  
31 actions shall be, and are hereby made available to the state of Kansas in  
32 the enforcement of the payment of any state tax. ~~Provided, That, except~~  
33 *that* the remedy herein provided shall be in addition to the various war-  
34 rant and lien procedures now provided by law for the collection of delin-  
35 quent taxes.

36 Sec. 3. K.S.A. 79-32,104 is hereby amended to read as follows: 79-  
37 32,104. (a) The amount paid upon declarations of estimated tax under  
38 this act during any calendar year shall be allowed as a credit against the  
39 income tax otherwise imposed on the taxpayer by the "Kansas income tax  
40 act."

41 (b) If the amount paid on the declaration of estimated tax during any  
42 calendar year exceeds the income tax liability of the taxpayer, any excess  
43 shall be applied to any other ~~income~~ tax then owed the state of Kansas

1 by such taxpayer ~~(including fines, penalties and interest, if any)~~, *as pro-*  
2 *vided by section 1, and amendments thereto*, and the balance of such  
3 excess, if any, refunded to the taxpayer as provided in K.S.A. 79-32,105  
4 (c), *and amendments thereto*, or at the taxpayer's option credited to ~~his~~  
5 ~~or her~~ *the taxpayer's* declaration of estimated tax liability for the suc-  
6 ceeding year.

7 Sec. 4. K.S.A. 2001 Supp. 79-32,105 is hereby amended to read as  
8 follows: 79-32,105. (a) The director shall remit the entire amount col-  
9 lected under the provisions of this act and from the income tax imposed  
10 upon individuals, corporations, estates or trusts pursuant to the "Kansas  
11 income tax act" less amounts withheld as provided in subsection (b) and  
12 any amounts credited to the IMPACT program repayment fund or the  
13 IMPACT program services fund under K.S.A. 74-50,107 and amend-  
14 ments thereto to the state treasurer in accordance with the provisions of  
15 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
16 remittance, the state treasurer shall deposit the entire amount in the state  
17 treasury to the credit of the state general fund.

18 (b) A revolving fund, designated as "income tax refund fund" not to  
19 exceed \$4,000,000 shall be set apart and maintained by the director from  
20 income tax collections, withholding tax collections, and estimated tax col-  
21 lections and held by the state treasurer for prompt payment of all income  
22 tax refunds, for the payment of interest as provided in subsection (e), for  
23 payment of homestead property tax refunds in accordance with the home-  
24 stead property tax refund act and for payment of property tax refunds  
25 allowed pursuant to the provisions of K.S.A. 2001 Supp. 79-255, and  
26 amendments thereto. The fund shall be in such amount, within the limit  
27 set by this section, as the director determines is necessary to meet current  
28 refunding requirements under this act.

29 (c) If the director discovers from the examination of the return, or  
30 upon claim duly filed by the taxpayer or upon final judgment of the court  
31 that the income tax, withholding tax, declaration of estimated tax or any  
32 penalty or interest paid by or credited to any taxpayer is in excess of the  
33 amount legally due *for such tax or any other tax owed the state of Kansas*,  
34 the director shall certify to the director of accounts and reports the name  
35 of the taxpayer, the amount of refund and such other information as the  
36 director may require. Upon receipt of such certification the director of  
37 accounts and reports shall issue a warrant on the state treasurer for the  
38 payment to the taxpayer out of the fund provided in subsection (b), except  
39 that no refund shall be made for a sum less than \$5, but such amount  
40 may be claimed by the taxpayer as a credit against the taxpayer's tax  
41 liability in the taxpayer's next succeeding taxable year.

42 (d) When a resident taxpayer dies, and the director determines that  
43 a refund is due the claimant not in excess of \$100, the director shall certify

1 to the director of accounts and reports the name and address of the  
2 claimant entitled to the refund and the amount of the refund. A refund  
3 may be made upon a claim duly made on behalf of the estate of the  
4 deceased or in the absence of any such claim upon a claim by a surviving  
5 spouse and if none upon the claim by any heir at law. Upon receipt of  
6 such certification the director of accounts and reports shall issue a warrant  
7 on the state treasurer for the payment to the claimant out of the fund  
8 provided in subsection (b).

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

16 For the purposes of this subsection:

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

20 (2) any tax paid by the taxpayer before the last day prescribed for its  
21 payment, any income tax withheld from the taxpayer during any calendar  
22 year and any amount paid by the taxpayer as estimated income tax for a  
23 taxable year shall be deemed to have been paid on the last day prescribed  
24 for filing the return for the taxable year to which such amount constitutes  
25 a credit or payment, determined without regard to any extension of time  
26 granted the taxpayer;

27 (3) if any overpayment of tax results from a carryback of a net oper-  
28 ating loss or net capital loss, such overpayment shall be deemed not to  
29 have been made prior to the close of the taxable year in which such net  
30 operating loss or net capital loss arises. For purposes of this paragraph,  
31 the return for the loss year shall not be deemed to be filed before claim  
32 for such overpayment is filed;

33 (4) in the case of a credit, interest shall be allowed and paid from the  
34 date of the overpayment to the due date of the amount against which the  
35 credit is taken, except that if any overpayment of income tax is claimed  
36 as a credit against estimated tax for the succeeding taxable year, such  
37 amount shall be considered as a payment of the income tax for the suc-  
38 ceeding taxable year, whether or not claimed as a credit in the return of  
39 estimated tax for such succeeding taxable year, and no interest shall be  
40 allowed or paid in such overpayment for the taxable year in which the  
41 overpayment arises;

42 (5) in the case of a tax return which is filed after the last date pre-  
43 scribed for filing such return, determined with regard to extensions, no

1 interest shall be allowed or paid for any period before the date on which  
2 the return is filed;

3 (6) in the case of a refund, interest shall be allowed and paid from  
4 the date of the overpayment to a date preceding the date of the refund  
5 check by not more than 30 days, as determined by the director, whether  
6 or not such refund check is accepted by the taxpayer after tender of such  
7 check to the taxpayer, but acceptance of such check shall be without  
8 prejudice to any right of the taxpayer to claim any additional overpayment  
9 and interest thereon; and

10 (7) if any overpayment is refunded within two months after the last  
11 date prescribed, or permitted by extension of time, for filing the return  
12 of such tax, or within two months after the return was filed, whichever is  
13 later, no interest shall be allowed or paid. For the purposes of this section,  
14 an overpayment shall be deemed to have been refunded at the time the  
15 refund check in the amount of the overpayment, plus any interest due  
16 thereon, is deposited in the United States mail.

17 Sec. 5. K.S.A. 79-2015 and 79-32,104 and K.S.A. 2001 Supp. 79-  
18 32,105 are hereby repealed.

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

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