

SENATE BILL No. 472

AN ACT relating to taxation; amending K.S.A. 79-2015, 79-3226, 79-3271, 79-32,104 and 79-3650 and K.S.A. 2001 Supp. 74-2438, 75-5154 and 79-32,105 and repealing the existing sections.

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

New Section 1. (a) The department of revenue is authorized to become a signatory to an agreement with one or more states for the purpose of providing a multi-state, voluntary, streamlined system for sales and use tax collection and administration to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce, at such time as the legislature takes further action to bring the state's laws in compliance with the requirements of the agreement. The department of revenue is further authorized to participate in the streamlined sales tax project, identify all changes in this state's sales and use tax laws and rules and regulations that would be required in order to comply with such agreement, take such other actions reasonably required to prepare this state for entry into such agreement.

(b) The secretary of revenue, or the secretary's designee, is authorized to represent this state before other states that are participating in the streamlined sales tax project or that are signatories to such agreement. In addition, the president and the minority leader of the senate and the speaker and the minority leader of the house of representatives may each appoint a person who is also authorized to so represent this state. All such appointees attending meetings shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

New Sec. 2. The secretary of revenue is hereby authorized to adopt rules and regulations necessary to administer and not inconsistent with the provisions of chapters 41 and 79 of the Kansas Statutes Annotated. All rules and regulations of the secretary of revenue in existence on the effective date of this act shall continue to be in effect and shall be deemed to be rules and regulations of the secretary until revised, amended or nullified pursuant to law.

Sec. 3. K.S.A. 2001 Supp. 74-2438 is hereby amended to read as follows: 74-2438. An appeal may be taken to the state board of tax appeals from any finding, ruling, order, decision, final determination or other final action, including action relating to abatement or reduction of penalty and interest, on any case of the secretary of revenue or the secretary's designee by any person aggrieved thereby. Notice of such appeal shall be filed with the secretary of the board within 30 days after such finding, ruling, order, decision, final determination or other action on a case, and a copy served upon the secretary of revenue or the secretary's designee. *An appeal may also be taken to the state board of tax appeals at any time when no final determination has been made by the secretary of revenue or the secretary's designee after 270 days has passed since the date of the request for informal conference pursuant to K.S.A. 79-3226, and amendments thereto and no written agreement by the parties to further extend the time for making such final determination is in effect.* Upon receipt of a timely appeal, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. The hearing before the board shall be a de novo hearing unless the parties agree to submit the case on the record made before the secretary of revenue or the secretary's designee. With regard to any matter properly submitted to the board relating to the determination of valuation of residential property or real property used for commercial and industrial purposes for taxation purposes, it shall be the duty of the county or district appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination, except that no such duty shall accrue with regard to leased commercial and industrial property unless the property owner has furnished to the county or district appraiser a complete income and expense statement for the property for the three years next preceding the year of appeal. No presumption shall exist in favor of the county or district appraiser with respect to the validity and correctness of such determination. No interest shall accrue on the amount of the assessment of tax subject to any such appeal beyond 120 days after the date the matter was fully submitted, except that, if a final order is issued within such time period, interest shall continue to accrue

until such time as the tax liability is fully satisfied, and if a final order is issued beyond such time period, interest shall recommence to accrue from the date of such order until such time as the tax liability is fully satisfied.

Sec. 4. K.S.A. 79-3226 is hereby amended to read as follows: 79-3226. (a) As soon as practicable after the return is filed, the director of taxation shall examine it and shall determine the correct amount of the tax. If the tax found due shall be greater than the amount theretofore paid, or if a claim for a refund is denied, notice shall be mailed to the taxpayer. Within 60 days after the mailing of such notice the taxpayer may request an informal conference with the secretary of revenue or the secretary's designee relating to the tax liability or denial of refund by filing a written request with the secretary of revenue or the secretary's designee which sets forth the objections to the proposed liability or proposed denial of refund. The purpose of such conference shall be to review and reconsider all facts and issues that underlie the proposed liability or proposed denial of refund. The secretary of revenue or the secretary's designee shall hold an informal conference with the taxpayer and shall issue a written final determination thereon. The informal conference shall not constitute an adjudicative proceeding under the Kansas administrative procedure act. Informal conferences held pursuant to this section may be conducted by the secretary of revenue or the secretary's designee. The rules of evidence shall not apply to an informal conference and no record shall be made, except at the request and expense of the secretary of revenue or the secretary's designee or taxpayer. The taxpayer may bring to the informal conference an attorney, certified public accountant and any other person to represent the taxpayer or to provide information. Because the purpose of the department staff is to aid the secretary or secretary's designee in the proper discharge of the secretary's or secretary's designee's duties, the secretary or secretary's designee may confer at any time with any staff member with respect to the case under reconsideration. The secretary of revenue or the secretary's designee shall issue a written final determination within 270 days of the date of the request for informal conference unless the parties agree in writing to extend the time for issuing such final determination. A final determination *issued within or after 270 days, with or without extension*, constitutes final agency action subject to administrative review by the state board of tax appeals. In the event that a written final determination is not rendered within 270 days, the taxpayer may appeal to the state board of tax appeals *at any time provided that a written extension of time is not in effect*.

(b) A final determination finding additional tax shall be accompanied by a notice and demand for payment. Notice under this section shall be sent by first-class mail in the case of individual taxpayers and by registered or certified mail in the case of all other taxpayers. The tax shall be paid within 20 days thereafter, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by K.S.A. 74-2438 and amendments thereto, but no additional tax shall be assessed for less than \$5 *unless the secretary or the secretary's designee determines the administration and collection cost involved in collecting an amount over \$5 but less than \$100 would not warrant collection of the amount due*. Interest at such rate shall continue to accrue on any additional tax liability during the course of any appeal.

Sec. 5. K.S.A. 79-3650 is hereby amended to read as follows: 79-3650. (a) A refund request may be filed directly by a consumer or purchaser if the consumer or purchaser: (1) paid the tax directly to the department; (2) provides evidence that the retailer refused or was unavailable to refund the tax; (3) provides evidence that the retailer did not act upon its refund request in a timely manner as provided in subsection (b), or; (4) ~~submits such a refund request pursuant to subsection (c)~~ *provides a notarized statement to the department from the retailer that the retailer: (A) Will not claim a refund of the same tax included in the purchaser's or consumer's refund request; (B) agrees to provide to the consumer or purchaser any information or documentation in the retailer's possession needed for submission to the department to support or prove the refund claim; (C) has remitted to the state the tax sought to be re-*

funded; and (D) has not taken or will not take a credit for such tax. A retailer providing false information in any such statement shall be subject to penalties prescribed by K.S.A. 2001 Supp. 79-3615(h), and amendments thereto.

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

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

Sec. 6. K.S.A. 79-3271 is hereby amended to read as follows: 79-3271. As used in this act, unless the context otherwise requires: (a) “Business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations, except that for taxable years commencing after December 31, 1995, a taxpayer may elect that all income ~~derived from the acquisition, management, use or disposition of tangible or intangible property~~ constitutes business income. The election shall be effective and irrevocable for the taxable year of the election and the following nine taxable years. The election shall be binding on all members of a unitary group of corporations.

(b) “Commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) “Financial organization” means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, investment company, or any type of insurance company, but such term shall not be deemed to include any business entity, other than those hereinbefore enumerated, whose primary business activity is making consumer loans or purchasing retail installment contracts from one or more sellers.

(e) “Nonbusiness income” means all income other than business income.

(f) “Public utility” means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

(g) “Sales” means all gross receipts of the taxpayer not allocated under K.S.A. 79-3274 through 79-3278, and amendments thereto.

(h) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) “Telecommunications company” means any business entity or unitary group of entities whose primary business activity is the transmission of communications in the form of voice, data, signals or facsimile communications by wire or fiber optic cable.

(j) “Distressed area taxpayer” means a corporation which: (1) Is located in a county which has a population of not more than 45,000 persons and which, as certified by the department of commerce *and housing*, has sustained an adverse economic impact due to the closure of a state hospital in such county pursuant to the recommendations of the hospital closure commission; and (2) which has a total annual payroll of \$20,000,000 or more for employees employed within such county.

New Sec. 7. If the amount of any tax payment, estimated or otherwise, made during any calendar year or other taxable period exceeds the taxpayer's liability for which such payment was made, any excess shall be applied to any other tax then owed the state of Kansas by such taxpayer, including fines, penalties and interests, if any, and the balance of such excess, if any, shall be refunded to the taxpayer.

Sec. 8. K.S.A. 79-2015 is hereby amended to read as follows: 79-2015. The taxes, fees, interest and penalties, levied and assessed by any state law administered by the ~~director~~ *secretary* of revenue may be collected in the same manner as a personal debt of the taxpayer to the state of Kansas from the time *the* same shall become due, and shall be recoverable in any court of competent jurisdiction in any action in the name of the state of Kansas, on relation of the ~~director~~ *secretary* of revenue *or the secretary's designee*. Such suit may be maintained, prosecuted, and all proceedings taken to the same effect and extent as for the enforcement of a right of action for debt. All provisional remedies available in such actions shall be, and are hereby made available to the state of Kansas in the enforcement of the payment of any state tax: ~~Provided, That, except that~~ the remedy herein provided shall be in addition to the various warrant and lien procedures now provided by law for the collection of delinquent taxes.

Sec. 9. K.S.A. 79-32,104 is hereby amended to read as follows: 79-32,104. (a) The amount paid upon declarations of estimated tax under this act during any calendar year shall be allowed as a credit against the income tax otherwise imposed on the taxpayer by the "Kansas income tax act."

(b) If the amount paid on the declaration of estimated tax during any calendar year exceeds the income tax liability of the taxpayer, any excess shall be applied to any other ~~income~~ tax then owed the state of Kansas by such taxpayer ~~including fines, penalties and interest, if any~~, *as provided by section 7, and amendments thereto*, and the balance of such excess, if any, refunded to the taxpayer as provided in K.S.A. 79-32,105 (c), *and amendments thereto*, or at the taxpayer's option credited to ~~his or her~~ *the taxpayer's* declaration of estimated tax liability for the succeeding year.

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

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

(c) If the director discovers from the examination of the return, or upon claim duly filed by the taxpayer or upon final judgment of the court that the income tax, withholding tax, declaration of estimated tax or any penalty or interest paid by or credited to any taxpayer is in excess of the amount legally due *for such tax or any other tax owed the state of Kansas*, the director shall certify to the director of accounts and reports the name of the taxpayer, the amount of refund and such other information as the director may require. Upon receipt of such certification the director of accounts and reports shall issue a warrant on the state treasurer for the payment to the taxpayer out of the fund provided in subsection (b), except

that no refund shall be made for a sum less than \$5, but such amount may be claimed by the taxpayer as a credit against the taxpayer's tax liability in the taxpayer's next succeeding taxable year.

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

(e) Interest shall be allowed and paid at the rate of 12% per annum upon any overpayment of the income tax imposed upon individuals, corporations, estates or trusts pursuant to the Kansas income tax act for any period prior to January 1, 1995, 6% per annum for the period commencing on January 1, 1995, and ending on December 31, 1997, and at the rate prescribed and determined pursuant to K.S.A. 79-2968, and amendments thereto, for any period thereafter.

For the purposes of this subsection:

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

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

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

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

(5) in the case of a tax return which is filed after the last date prescribed for filing such return, determined with regard to extensions, no interest shall be allowed or paid for any period before the date on which the return is filed;

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

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

New Sec. 11. (a) If any compensation required by K.S.A. 70a-102, and amendments thereto, is determined by the director to be unpaid: (1) Not due to negligence or to intentional disregard of this act or rules and

regulations promulgated by the secretary, interest on such compensation shall be added at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid; (2) due to negligence or to intentional disregard of this act or rules and regulations promulgated by the secretary, but without intent to defraud, a penalty of 10% of the amount of such compensation shall be added, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid; (3) due to fraud with intent to evade the compensation, there shall be added thereto a penalty of 50% of the amount of such compensation, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the compensation was due until paid.

(b) If any person fails or refuses to make any return, when required to do so under the provisions of K.S.A. 70a-101 *et seq.*, and amendments thereto, such person shall be subject to a penalty of \$25 per day for each return which such person fails or refuses to file.

(c) Whenever, in the judgment of the director, the failure of any person to comply with the provisions of subsection (a)(2) and (b) of this section, was due to reasonable cause, the director may, in the exercise of discretion, waive or reduce any of the penalties upon making a record of the reason therefor.

(d) In addition to all other penalties provided by this section, any person who: (1) Fails to make a return, or to pay any compensation required to be paid as required by K.S.A. 70a-101 *et seq.*, and amendments thereto; or (2) makes a false or fraudulent return, or fails to keep any books or records prescribed by K.S.A. 70a-101 *et seq.*, and amendments thereto; or (3) willfully violates any rules and regulations promulgated by the secretary for the enforcement and administration of K.S.A. 70a-101 *et seq.*, and amendments thereto; or (4) aids and abets another in attempting to evade the payment of any compensation required to be paid, shall be subject to the penalty prescribed for other violations by K.S.A. 70a-108, and amendments thereto.

(e) The director of taxation shall examine all returns filed under the provision of K.S.A. 70a-101 *et seq.*, and amendments thereto, and shall issue notices and final determinations of liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto, relating to income taxes.

Sec. 12. K.S.A. 2001 Supp. 75-5154 is hereby amended to read as follows: 75-5154. The secretary of revenue or the secretary's designee may, in the same manner and to the same extent as provided for income tax liabilities by K.S.A. 79-3233a through K.S.A. 79-3233i, and amendments thereto, abate all or part of a final liability for any excise tax imposed under the provisions of K.S.A. 12-1692 *et seq.*, 12-1696 *et seq.*, 41-501 *et seq.*, 79-3301 *et seq.*, 79-3370 *et seq.*, 79-3401 *et seq.*, 79-3490 *et seq.*, 79-34,108 *et seq.*, 79-3817 *et seq.*, 79-4101 *et seq.* ~~or~~, 79-41a01 or 79-5201 *et seq.*, and amendments thereto.

New Sec. 13. (a) Any correspondence issued by the department of revenue to a taxpayer or the taxpayer's representative demanding payment of an assessment of any tax the imposition and collection of which is administered by the department shall consist of a detailed, clear and accurate explanation of the assessment demand including, but not limited to, the specific tax and tax year to which such assessment applies and penalties and interest which apply thereto. If the department proposes to change the tax or refund due on a return filed by a taxpayer, correspondence detailing the change shall be sent to the taxpayer. The correspondence shall specifically identify the proposed change and explain in simple and nontechnical terms the reasons for the change.

(b) Any such correspondence demanding the payment of an assessment of tax, penalties and interest in an amount in excess of \$750 for individual accounts and in excess of \$2,000 for business accounts shall be reviewed prior to issuance for accuracy by an employee of the department and shall provide the employer identification number and contact telephone number of the employee performing any such review.

New Sec. 14. In the event a taxpayer has designated a third party or other representative to discuss an income tax return upon the taxpayer's Kansas return, the department shall adhere and comply with such des-

ignation, and shall discuss or correspond with such designee or representative regarding matters concerning the return, including collection matters.

New Sec. 15. In addition to the authority to waive any civil penalty imposed by law for the violation of any law pertaining to any tax administered by the department of revenue, the secretary or the secretary's designee shall waive any such penalty upon the finding of any circumstance allowing waiver of civil penalties pursuant to the federal internal revenue code, as in effect on January 1, 2002.

New Sec. 16. Upon a resolution of any assessment of tax, penalties and interest of any tax the imposition and collection of which is administered by the department, a closing letter evidencing such resolution shall be issued to the affected taxpayer or the taxpayer's representative, as the case may require, within 30 days of the date upon which such resolution is agreed to. The taxpayer shall be entitled to rely on such closing letter as it relates to the issues resolved.

New Sec. 17. (a) Notwithstanding any provision of K.S.A. 79-3235, and amendments thereto, to the contrary, the procedures set forth by this section shall apply to the issuance of any warrant and the levy upon property pursuant to such provisions.

(b) The secretary or the secretary's designee shall notify in writing the person who is the subject of the warrant of the filing of a warrant under K.S.A. 79-3235, and amendments thereto. The notice required shall be given in person, left at the dwelling or usual place of business of such person or sent by certified or registered mail to such person's last known dwelling address, not more than five business days after the day of the filing of the notice of lien. The notice shall include in simple and nontechnical terms the amount of unpaid taxes, the administrative appeals available to the taxpayer with respect to such warrant and the procedures relating to such appeals, and the provisions of law and procedures relating to the release of warrants on property.

Sec. 18. K.S.A. 79-2015, 79-3226, 79-3271, 79-32,104 and 79-3650 and K.S.A. 2001 Supp. 74-2438, 75-5154 and 79-32,105 are hereby repealed.

Sec. 19. 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 SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.