

HOUSE BILL No. 2702

By Committee on Taxation

2-4

AN ACT concerning taxation; relating to waiver of penalties and interest; destination-based sourcing; amending K.S.A. 2003 Supp. 79-3615 and 79-3706 and repealing the existing sections.

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

Section 1. K.S.A. 2003 Supp. 79-3615 is hereby amended to read as follows: 79-3615. (a) If any taxpayer shall fail to pay the tax required under this act at the time required by or under the provisions of this act, there shall be added to the unpaid balance of the tax, interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968 and amendments thereto from the date the tax was due until paid.

(b) For all taxable years ending prior to January 1, 2002, if any taxpayer due to negligence or intentional disregard fails to file a return or pay the tax due at the time required by or under the provisions of this act, there shall be added to the tax a penalty in an amount equal to 10% of the unpaid balance of tax due.

(c) For all taxable years ending prior to January 1, 2002, if any person fails to make a return, or to pay any tax, within six months from the date the return or tax was due, except in the case of an extension of time granted by the secretary of revenue or the secretary's designee, there shall be added to the tax due a penalty equal to 25% of the unpaid balance of such tax due. Notwithstanding the foregoing, in the event an assessment is issued following a field audit for any period for which a return was filed by the taxpayer and all of the tax was paid pursuant to such return, a penalty shall be imposed for the period included in the assessment in the amount of 10% of the unpaid balance of tax due shown in the notice of assessment. If after review of a return for any period included in the assessment, the secretary or secretary's designee determines that the underpayment of tax was due to the failure of the taxpayer to make a reasonable attempt to comply with the provisions of this act, such penalty shall be imposed for the period included in the assessment in the amount of 25% of the unpaid balance of tax due.

(d) For all taxable years ending after December 31, 2001, if any taxpayer fails to file a return or pay the tax if one is due, at the time required by or under the provisions of this act, there shall be added to the tax an

1 additional amount equal to 1% of the unpaid balance of the tax due for
2 each month or fraction thereof during which such failure continues, not
3 exceeding 24% in the aggregate, plus interest at the rate prescribed by
4 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
5 the tax was due until paid. Notwithstanding the foregoing, in the event
6 an assessment is issued following a field audit for any period for which a
7 return was filed by the taxpayer and all of the tax was paid pursuant to
8 such return, a penalty shall be imposed for the period included in the
9 assessment in an amount of 1% per month not exceeding 10% of the
10 unpaid balance of tax due shown in the notice of assessment. If after
11 review of a return for any period included in the assessment, the secretary
12 or secretary's designee determines that the underpayment of tax was due
13 to the failure of the taxpayer to make a reasonable attempt to comply
14 with the provisions of this act, such penalty shall be imposed for the
15 period included in the assessment in the amount of 25% of the unpaid
16 balance of tax due.

17 (e) If any taxpayer, with fraudulent intent, fails to pay any tax or make,
18 render or sign any return, or to supply any information, within the time
19 required by or under the provisions of this act, there shall be added to
20 the tax a penalty in an amount equal to 50% of the unpaid balance of tax
21 due.

22 (f) Penalty or interest applied under the provisions of subsections (a)
23 and (d) shall be in addition to the penalty added under any other provi-
24 sions of this section, but the provisions of subsections (b) and (c) shall be
25 mutually exclusive of each other.

26 (g) (1) Whenever the secretary or the secretary's designee deter-
27 mines that the failure of the taxpayer to comply with the provisions of
28 subsections (a), (b), (c) and (d) of this section was due to reasonable
29 causes, the secretary or the secretary's designee may waive or reduce any
30 of the penalties and may reduce the interest rate to the underpayment
31 rate prescribed and determined for the applicable period under section
32 6621 of the federal internal revenue code as in effect on January 1, 1994,
33 upon making a record of the reasons therefor.

34 (2) *Whenever the secretary or the secretary's designee determines*
35 *that a taxpayer has additional liability and such additional liability was*
36 *due to reasonable error on the part of the taxpayer in implementing or*
37 *applying the destination-based sourcing rules as provided in K.S.A. 2003*
38 *Supp. 79-3670 et seq., and amendments thereto, the secretary or the sec-*
39 *retary's designee may waive any penalties and interest related to such*
40 *additional liability, upon making a record of the reasons therefor.*

41 (h) In addition to all other penalties provided by this section, any
42 person who willfully fails to make a return or to pay any tax imposed
43 under the Kansas retailers' sales tax act, or who makes a false or fraudulent

1 return, or fails to keep any books or records prescribed by this act, or
2 who willfully violates any regulations of the secretary of revenue, for the
3 enforcement and administration of this act, or who aids and abets another
4 in attempting to evade the payment of any tax imposed by this act, or
5 who violates any other provision of this act, shall, upon conviction thereof,
6 be fined not less than \$500, nor more than \$10,000, or be imprisoned in
7 the county jail not less than one month, nor more than six months, or be
8 both so fined and imprisoned, in the discretion of the court.

9 (i) No penalty assessed hereunder shall be collected if the taxpayer
10 has had the tax abated on appeal, and any penalty collected upon such
11 tax shall be refunded.

12 Sec. 2. K.S.A. 2003 Supp. 79-3706 is hereby amended to read as
13 follows: 79-3706. (a) Each retailer or person subject to the provisions of
14 this act shall make remittances of the tax imposed by K.S.A. 79-3703, and
15 amendments thereto, and file returns in accordance with the provisions
16 of K.S.A. 79-3607 and amendments thereto, except that the time schedule
17 for remitting tax and filing returns shall be determined on the basis of
18 calendar year compensating tax liability in lieu of calendar year sales tax
19 liability. Returns shall show in detail the total quantity of tangible personal
20 property sold by any retailer or used, stored or consumed by any person
21 within the state during the period for which the return is filed subject to
22 the tax herein imposed, and such other information as the director may
23 deem pertinent. The director may, upon request and a proper showing
24 of the necessity therefor, grant an extension of time not to exceed 60 days
25 for making any return and payment. Returns shall be signed by the re-
26 tailer or such retailer's duly authorized agent, and must be certified by
27 such retailer to be correct.

28 (b) If any taxpayer fails to pay the tax required under the act of which
29 this section is amendatory at the time required by or under the provisions
30 of the act of which this section is amendatory, there shall be added to the
31 unpaid balance of the tax, interest at the rate per month prescribed by
32 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
33 the tax was due until paid.

34 (c) For all taxable years ending prior to January 1, 2002, if any tax-
35 payer due to negligence or intentional disregard fails to file a return or
36 pay the tax due at the time required by or under the provisions of this
37 section, there shall be added to the tax a penalty in an amount equal to
38 10% of the unpaid balance of tax due.

39 (d) For all taxable years ending prior to January 1, 2002, if any person
40 fails to make a return, or to pay any tax, within six months from the date
41 the return or tax was due, except in the case of an extension of time
42 granted by the secretary of revenue or the secretary's designee, there
43 shall be added to the tax due a penalty equal to 25% of the unpaid balance

1 of such tax due.

2 (e) For all taxable years ending after December 31, 2001, if any tax-
3 payer fails to file a return or pay the tax if one is due, at the time required
4 by or under the provisions of this act, there shall be added to the tax an
5 additional amount equal to 1% of the unpaid balance of the tax due for
6 each month or fraction thereof during which such failure continues, not
7 exceeding 24% in the aggregate, plus interest at the rate prescribed by
8 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
9 the tax was due until paid. Notwithstanding the foregoing, in the event
10 an assessment is issued following a field audit for any period for which a
11 return was filed by the taxpayer and all of the tax was paid pursuant to
12 such return, a penalty shall be imposed for the period included in the
13 assessment in an amount of 1% per month not exceeding 10% of the
14 unpaid balance of tax due shown in the notice of assessment. If after
15 review of a return for any period included in the assessment, the secretary
16 or secretary's designee determines that the underpayment of tax was due
17 to the failure of the taxpayer to make a reasonable attempt to comply
18 with the provisions of this act, such penalty shall be imposed for the
19 period included in the assessment in the amount of 25% of the unpaid
20 balance of tax due.

21 (f) If any taxpayer, with fraudulent intent, fails to pay any tax or make,
22 render or sign any return, or to supply any information, within the time
23 required by or under the provisions of this section, there shall be added
24 to the tax a penalty in an amount equal to 50% of the unpaid balance of
25 tax due.

26 (g) Penalty or interest applied under the provisions of subsections (b)
27 and (e) shall be in addition to the penalty added under any other provi-
28 sions of this section, but the provisions of subsections (c) and (d) shall be
29 mutually exclusive of each other.

30 (h) (1) Whenever the secretary of revenue or the secretary's designee
31 determines that the failure of the taxpayer to comply with the provisions
32 of subsections (b), (c), (d) and (e) was due to reasonable causes, the
33 secretary or the secretary's designee may waive or reduce any of the
34 penalties and may reduce the interest rate to the underpayment rate
35 prescribed and determined for the applicable period under section 6621
36 of the federal internal revenue code as in effect on January 1, 1994 upon
37 making a record of the reasons therefor.

38 (2) *Whenever the secretary or the secretary's designee determines*
39 *that a taxpayer has additional liability and such additional liability was*
40 *due to reasonable error on the part of the taxpayer in implementing and*
41 *applying the destination-based sourcing rules as provided in K.S.A. 2003*
42 *Supp. 79-3670 et seq., and amendments thereto, the secretary or the sec-*
43 *retary's designee may waive any penalties and interest related to such*

1 *additional liability, upon making a record of the reasons therefor.*
2 (i) In addition to all other penalties provided by this section, any per-
3 son who willfully fails to make a return or to pay any tax imposed under
4 the Kansas compensating tax act, or who makes a false or fraudulent
5 return, or fails to keep any books or records prescribed by the Kansas
6 compensating tax act, or who willfully violates any regulations of the sec-
7 retary of revenue, for the enforcement and administration of the Kansas
8 compensating tax act, or who aids and abets another in attempting to
9 evade the payment of any tax imposed by the Kansas compensating tax
10 act, or who violates any other provision of the Kansas compensating tax
11 act, shall, upon conviction thereof, be fined not less than \$100 nor more
12 than \$1,000, or be imprisoned in the county jail not less than one month
13 nor more than six months, or be both so fined and imprisoned, in the
14 discretion of the court.
15 (j) No penalty assessed hereunder shall be collected if the taxpayer
16 has had the tax abated on appeal, and any penalty collected upon such
17 tax shall be refunded.
18 Sec. 3. K.S.A. 2003 Supp. 79-3615 and 79-3706 are hereby repealed.
19 Sec. 4. This act shall take effect and be in force from and after its
20 publication in the statute book.

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