

SENATE BILL No. 532

By Committee on Ways and Means

2-17

9 AN ACT concerning sales taxation; relating to time for returns and pay-
10 ment of tax; waiver of penalties and interest in certain circumstances;
11 income tax credit for certain retailer costs; remittance credits; amend-
12 ing K.S.A. 2003 Supp. 79-3607, 79-3615 and 79-3706 and repealing
13 the existing sections.
14

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

16 Section 1. K.S.A. 2003 Supp. 79-3607 is hereby amended to read as
17 follows: 79-3607. (a) Retailers shall make returns to the director at the
18 times prescribed by this section upon forms prescribed and furnished by
19 the director stating: (1) The name and address of the retailer; (2) the total
20 amount of gross sales of all tangible personal property and taxable services
21 rendered by the retailer during the period for which the return is made;
22 (3) the total amount received during the period for which the return is
23 made on charge and time sales of tangible personal property made and
24 taxable services rendered prior to the period for which the return is made;
25 (4) deductions allowed by law from such total amount of gross sales and
26 from total amount received during the period for which the return is
27 made on such charge and time sales; (5) receipts during the period for
28 which the return is made from the total amount of sales of tangible per-
29 sonal property and taxable services rendered during such period in the
30 course of such business, after deductions allowed by law have been made;
31 (6) receipts during the period for which the return is made from charge
32 and time sales of tangible personal property made and taxable services
33 rendered prior to such period in the course of such business, after de-
34 ductions allowed by law have been made; *and* (7) gross receipts during
35 the period for which the return is made from sales of tangible personal
36 property and taxable services rendered in the course of such business
37 upon the basis of which the tax is imposed. The return shall include such
38 other pertinent information as the director may require. In making such
39 return, the retailer shall determine the market value of any consideration,
40 other than money, received in connection with the sale of any tangible
41 personal property in the course of the business and shall include such
42 value in the return. Such value shall be subject to review and revision by
43 the director as hereinafter provided. Refunds made by the retailer during

1 the period for which the return is made on account of tangible personal
2 property returned to the retailer shall be allowed as a deduction under
3 subdivision (4) of this section in case the retailer has theretofore included
4 the receipts from such sale in a return made by such retailer and paid
5 taxes therein imposed by this act. The retailer shall, at the time of making
6 such return, pay to the director the amount of tax herein imposed, except
7 as otherwise provided in this section. The director may extend the time
8 for making returns and paying the tax required by this act for any period
9 not to exceed 60 days under such rules and regulations as the secretary
10 of revenue may prescribe. When the total tax for which any retailer is
11 liable under this act, does not exceed the sum of \$80 in any calendar year,
12 the retailer shall file an annual return on or before January 25 of the
13 following year. When the total tax liability does not exceed ~~\$1,600~~ \$3,200
14 in any calendar year, the retailer shall file returns quarterly on or before
15 the 25th day of the month following the end of each calendar quarter.
16 When the total tax liability exceeds ~~\$1,600~~ \$3,200 in any calendar year,
17 the retailer shall file a return for each month on or before the 25th day
18 of the following month. When the total tax liability exceeds \$32,000 in
19 any calendar year, the retailer shall be required to pay the sales tax liability
20 for the first 15 days of each month to the director on or before the 25th
21 day of that month. Any such payment shall accompany the return filed
22 for the preceding month. A retailer will be considered to have complied
23 with the requirements to pay the first 15 days' liability for any month if,
24 on or before the 25th day of that month, the retailer paid 90% of the
25 liability for that fifteen-day period, or 50% of such retailer's liability in
26 the immediate preceding calendar year for the same month as the month
27 in which the fifteen-day period occurs computed at the rate applicable in
28 the month in which the fifteen-day period occurs, and, in either case, paid
29 any underpayment with the payment required on or before the 25th day
30 of the following month. Such retailers shall pay their sales tax liabilities
31 for the remainder of each such month at the time of filing the return for
32 such month. Determinations of amounts of liability in a calendar year for
33 purposes of determining filing requirements shall be made by the director
34 upon the basis of amounts of liability by those retailers during the pre-
35 ceding calendar year or by estimates in cases of retailers having no pre-
36 vious sales tax histories. The director is hereby authorized to modify the
37 filing schedule for any retailer when it is apparent that the original de-
38 termination was inaccurate.

39 (b) All model 1, model 2 and model 3 sellers are required to file
40 returns electronically. Any model 1, model 2 or model 3 seller may submit
41 its sales and use tax returns in a simplified format approved by the direc-
42 tor. Any seller that is registered under the agreement, which does not
43 have a legal requirement to register in this state, and is not a model 1,

1 model 2 or model 3 seller, may submit its sales and use tax returns as
2 follows: (1) Upon registration, the director shall provide to the seller the
3 returns required;

4 (2) seller shall file a return anytime within one year of the month of
5 initial registration, and future returns are required on an annual basis in
6 succeeding years; and

7 (3) in addition to the returns required in subsection (b)(2), sellers are
8 required to submit returns in the month following any month in which
9 they have accumulated state and local sales tax funds for this state in the
10 amount of \$1,600 or more.

11 Sec. 2. K.S.A. 2003 Supp. 79-3615 is hereby amended to read as
12 follows: 79-3615. (a) If any taxpayer shall fail to pay the tax required under
13 this act at the time required by or under the provisions of this act, there
14 shall be added to the unpaid balance of the tax, interest at the rate per
15 month prescribed by subsection (a) of K.S.A. 79-2968 and amendments
16 thereto from the date the tax was due until paid.

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

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

38 (d) For all taxable years ending after December 31, 2001, if any tax-
39 payer fails to file a return or pay the tax if one is due, at the time required
40 by or under the provisions of this act, there shall be added to the tax an
41 additional amount equal to 1% of the unpaid balance of the tax due for
42 each month or fraction thereof during which such failure continues, not
43 exceeding 24% in the aggregate, plus interest at the rate prescribed by

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

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

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

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

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

38 (h) In addition to all other penalties provided by this section, any
39 person who willfully fails to make a return or to pay any tax imposed
40 under the Kansas retailers' sales tax act, or who makes a false or fraudulent
41 return, or fails to keep any books or records prescribed by this act, or
42 who willfully violates any regulations of the secretary of revenue, for the
43 enforcement and administration of this act, or who aids and abets another

1 in attempting to evade the payment of any tax imposed by this act, or
2 who violates any other provision of this act, shall, upon conviction thereof,
3 be fined not less than \$500, nor more than \$10,000, or be imprisoned in
4 the county jail not less than one month, nor more than six months, or be
5 both so fined and imprisoned, in the discretion of the court.

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

9 Sec. 3. K.S.A. 2003 Supp. 79-3706 is hereby amended to read as
10 follows: 79-3706. (a) Each retailer or person subject to the provisions of
11 this act shall make remittances of the tax imposed by K.S.A. 79-3703, and
12 amendments thereto, and file returns in accordance with the provisions
13 of K.S.A. 79-3607 and amendments thereto, except that the time schedule
14 for remitting tax and filing returns shall be determined on the basis of
15 calendar year compensating tax liability in lieu of calendar year sales tax
16 liability. Returns shall show in detail the total quantity of tangible personal
17 property sold by any retailer or used, stored or consumed by any person
18 within the state during the period for which the return is filed subject to
19 the tax herein imposed, and such other information as the director may
20 deem pertinent. The director may, upon request and a proper showing
21 of the necessity therefor, grant an extension of time not to exceed 60 days
22 for making any return and payment. Returns shall be signed by the re-
23 tailer or such retailer's duly authorized agent, and must be certified by
24 such retailer to be correct.

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

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

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

42 (e) For all taxable years ending after December 31, 2001, if any tax-
43 payer fails to file a return or pay the tax if one is due, at the time required

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

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

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

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

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

42 (i) In addition to all other penalties provided by this section, any per-
43 son who willfully fails to make a return or to pay any tax imposed under

1 the Kansas compensating tax act, or who makes a false or fraudulent
2 return, or fails to keep any books or records prescribed by the Kansas
3 compensating tax act, or who willfully violates any regulations of the sec-
4 retary of revenue, for the enforcement and administration of the Kansas
5 compensating tax act, or who aids and abets another in attempting to
6 evade the payment of any tax imposed by the Kansas compensating tax
7 act, or who violates any other provision of the Kansas compensating tax
8 act, shall, upon conviction thereof, be fined not less than \$100 nor more
9 than \$1,000, or be imprisoned in the county jail not less than one month
10 nor more than six months, or be both so fined and imprisoned, in the
11 discretion of the court.

12 (j) No penalty assessed hereunder shall be collected if the taxpayer
13 has had the tax abated on appeal, and any penalty collected upon such
14 tax shall be refunded.

15 New Sec. 4. For any retailer duly registered to collect Kansas retail-
16 ers' sales or compensating use tax pursuant to K.S.A. 79-3608, and amend-
17 ments thereto, and required to file monthly returns pursuant to K.S.A.
18 79-3609, and amendments thereto, that has total state and local retailers'
19 sales or compensating use tax liability not exceeding \$10,000 in either
20 calendar year 2003 or 2004 and that reports and remits local retailers'
21 sales or compensating use tax for multiple local taxing jurisdictions as a
22 result of the destination-based sourcing rules pursuant to K.S.A. 79-3670
23 *et seq.*, and amendments thereto, there shall be allowed as a credit in an
24 amount as provided in this section against the income tax liability of such
25 retailer imposed under the Kansas income tax act during the taxable year
26 2004. Such tax credit shall be in an amount equal to the costs incurred
27 by such retailer to implement such destination-based sourcing rules, not
28 to exceed \$500 per retailer, for the retailer's purchases of computer hard-
29 ware or software, modifications to computer software, or other equipment
30 directly related to and required for such implementation during the tax-
31 able year 2003 or 2004. Such tax credit may be claimed only one time.
32 Any retailer claiming this tax credit shall file documentation required by
33 the secretary sufficient to verify such retailer's qualification for the tax
34 credit with the income tax return at the time the credit is claimed.

35 New Sec. 5. Commencing July 1, 2006, except as otherwise pro-
36 vided, there shall be allowed as a credit to each remittance of sales and
37 compensating use tax pursuant to the provisions of the Kansas retailers'
38 sales tax and the Kansas compensating tax acts required to be made by a
39 retailer, an amount equal to 0.5% of such remittance. The total credit
40 amount pursuant to this section for any month shall not exceed \$1,000
41 for each retailer. No credit shall be allowed pursuant to this section after
42 December 31, 2009, unless the United States congress enacts legislation,
43 prior to such date, that authorizes the secretary of revenue to require

- 1 some out-of-state, remote sellers lacking physical presence in this state
- 2 to collect and remit sales and local sales or use taxes.
- 3 Sec. 6. K.S.A. 2003 Supp. 79-3607, 79-3615 and 79-3706 are hereby
- 4 repealed.
- 5 Sec. 7. This act shall take effect and be in force from and after its
- 6 publication in the statute book.