

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by Chairman Edmonds at 9:02 a.m. on February 19, 2002 in Room 519-S of the Capitol.

All members were present except: Representative Wilson, excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor
Carol Doel, Secretary

Conferrees appearing before the Committee: Richard Cram, Department of Revenue

Others Attending: See attached list.

By unanimous consent bill will be introduced at the request of Representative Huy to allow deduction for federal income tax paid. [HB 2995 - Income tax deduction for federal income liability]

Request of Representative Edmonds was approved to introduce a bill for a limit on property tax by political subdivisions. [HB 3025 - Political subdivisions property tax limit]

At the informational presentation on the Property Tax Appeals Process on February 12, 2002, the Committee requested information on the percentage of time that the Regular Division of the Board upholds the decisions of the local Hearing Officer Panels and the decisions of the Small Claims Hearing Officers. The requested information was presented by Tony Folsom, Executive Director/General Counsel of the State Board of Tax Appeals (Attachment #1).

Hearing was opened on
HB 2649 - Rule and regulation authority of secretary of revenue.

Richard Cram Director of the Office of Policy & Research of the Department of Revenue, presented testimony in support of **HB 2649** (Attachment #2). Mr. Cram explained that **HB 2649** would give the Secretary of Revenue authority to adopt rules and regulations necessary to administer the provisions of Chapters 41 and 79 of Kansas Statutes Annotated and proposed an amendment.

No opponents appeared.

Hearing on HB 2649 was closed..

Hearing was opened on
HB 2650 - Timing of Taxpayer Appeals.

Richard Cram Director of the Office of Policy & Research of the Department of Revenue, presented testimony in support of **HB 2650** providing background information and explanation of its purpose (Attachment #3). Mr. Cram responded to questions from members of the Committee.

No opponents appeared.

Hearing on HB 2650 was closed.

CONTINUATION SHEET

Hearing was opened on

HB 2651 - Sales tax direct fund procedures.

Richard Cram Director of the Office of Policy & Research of the Department of Revenue, presented testimony in support of **HB 2651** (Attachment #4), describing current law covering filing sales tax refund claims by the retailer and explaining the changes requested which would expand the circumstances when a consumer can file a sales tax refund directly with the Department of Revenue rather than through a retailer. Included in his testimony was a proposed amendment.

No opponents appeared.

Hearing on **HB 2651** was closed.

The meeting adjourned at 9:40 a.m. The next scheduled meeting will be February 20.

GUEST LIST

DATE Feb. 19, 2002

NAME	REPRESENTING
George Petersen	KS TAXPAYERS Network
Jack Graves	Kuke - P-76 + K roads - Morgan
Christi Stewart	KS motor carriers Assoc.
Doann Williams	KS motor carriers Assoc.
Janet Stubbs	KBIA
Markie Carpenter	KCI
Mike Orit	Pinegar - Smith
J.H. Bruner	DOB
Tom Bruno	BBBA
BILL YANEK	Kansas Assn of REALTORS
Ed O'Mall	OB Chris
Luke Bauer	Rep Tafarelli

HOUSE TAXATION COMMITTEE
REQUEST FOR ADDITIONAL INFORMATION
ON PROPERTY TAX APPEALS PROCESS AND THE
SMALL CLAIMS DIVISION OF THE BOARD OF TAX APPEALS

BY

Tony R. Folsom, Executive Director/General Counsel
Kansas Board of Tax Appeals

During my February 11, 2002, presentation before the House Taxation Committee, the Committee requested information concerning the percentage of time that the Regular Division of the Board upholds the decisions of the local Hearing Officer Panels and the decisions of the Small Claims Hearing Officers. The purpose of this supplemental information is to provide the Committee with the requested information.

On page 2 of this report are the numbers for the Regular Division (chart "A") and Small Claims Division (chart "B") showing the percentage of time that taxpayers receive some relief at the Regular Division and at the Small Claims Division. This information was provided to you at the February 11th presentation. I am providing it again so you can compare it to the supplemental information requested.

On page 3 of this report are the numbers showing the percentage of the time the Regular Division of the Board upholds the decisions of the local Hearing Officer Panels (chart "C") and the decisions of the Small Claims Hearing Officers (chart "D"). You will note that the biggest percentage of cases on appeal from a local Hearing Officer Panel were stipulated by the parties at the Regular Division.

Concerning the Small Claims decisions on page 3 (chart "D"), you will note that several cases stipulated at the Regular Division (25% for 2000 and 34% for 2001). However, if you look only at the percentage where taxpayers were denied relief by the Regular Division, you will see that for calendar year 2000 the Regular Division upheld the Small Claims decisions 37% of the time ($234 \div 630$). In calendar year 2001, the Regular Division upheld the Small Claims decisions 18% of the time ($102 \div 558$).

Looking at the "Granted" and "Partial" relief granted, in calendar year 2000 the Regular Division overturned the Small Claims decision in whole or in part 14% of the time ($40 \text{ Granted} + 50 \text{ Partial} = 90 \div 630$). In calendar year 2001 the Regular Division overturned the Small Claims decisions 8% of the time ($19 \text{ Granted} + 28 \text{ Partial} = 47 \div 558$).

On page 4 of this report is a listing of the definitions of the terms used in the charts.

I hope this information is helpful to you. Please feel free to contact me if you require additional information or if you have any questions or concerns. I can be reached by telephone at 785-296-2388 and by e-mail at maildesk@bota.state.ks.us.

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(A) Regular Division (Equalization and Protest Appeals)

1999	Granted	117	Denied	616	Dism. TP	664
	Partial	145	Dismissed	17		
	Settled	1	DLJ	36		
	Stip	749	DLP	34		
Total		1,012		703		664
%		43%		30%		28%

2000	Granted	44	Denied	231	Dism. TP	230
	Partial	62	Dismissed	26		
	Stip	157	DLJ	19		
			DLP	8		
Total		263		284		230
%		34%		37%		30%

2001	Granted	256	Denied	1,285	Dism. TP	702
	Partial	138	Dismissed	53		
	Stip	894	DLJ	81		
			DLP	106		
Total		1,288		1,525		702
%		37%		43%		20%

(B) Small Claims

1999	Granted	483	Denied	1,010	Dism TP	104
	Partial	507				
	Stip	106	DLJ	69		
Total		1,096		994		120
%		48%		43%		5%

2000	Granted	200	Denied	1,303	Dism TP	77	
	Partial	794					Transferred
	Stip	146	DLJ	56			
			DLP	114			
Total		1,140		1,473		93	
%		42%		54%		3%	

2001	Granted	160	Denied	1,599	Dism TP	136	
	Partial	632					Transferred
	Stip	248	DLJ	24			
			DLP	163			
Total		1,040		1,786		463	
%		31%		54%		14%	

(C) REGULAR DIVISION DECISIONS ON CASES APPEALED FROM HEARING OFFICER PANEL DECISIONS

2000 calendar year (104 cases closed (103 from SG Co. & 1 from FO Co.))

Granted	0	Denied	4	Dism TP	38
Partial	0			Transferred	0
Stip	57	DLP	5		
Total	57		9		38
%	55%		9%		37%

2001 calendar year (25 cases closed (all from SG Co.))

Granted	0	Denied	0	Dism TP	0
Partial	0			Transferred	0
Stip	19	DLP	6		
Total	19		6		0
%	76%		24%		0%

(D) REGULAR DIVISION DECISIONS ON CASES APPEALED FROM SMALL CLAIMS DECISIONS

2000 calendar year (630 equalization and protest cases closed)

Granted	40	Denied	234	Dism TP	96
Partial	50	DLJ	13		
Stip	159	DLP	38		
Total	249		285		96
%	40%		45%		15%

2001 calendar year (558 equalization and protest cases closed)

Granted	19	Denied	102	Dism TP	162
Partial	28	DLJ	51		
Stip	187	DLP	9		
Total	234		162		162
%	42%		29%		29%

Granted	Taxpayer's request for relief was granted.
Partial	Taxpayer's request for relief was not granted in its entirety, but the taxpayer did receive some relief.
Stip	The parties reached an agreement concerning the case and submitted the agreement to the Regular Division or Small Claims Division and the agreement was adopted.
Denied	Taxpayer's request for relief was denied.
DLJ	Dismissed for Lack of Jurisdiction. The Regular Division or Small Claims Division did not have statutory authority to consider the appeal; therefore, it was dismissed.
DLP	Dismissed for Lack of Prosecution. The party appealing did not appear at the scheduled hearing; therefore, the appeal was dismissed for failure to prosecute the appeal.
Dism TP	Taxpayer requested that the appeal be dismissed.
Transferred	Cases filed in Small Claims were transferred to Regular Division for consideration.

STATE OF KANSAS

Bill Graves, Governor

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Stephen S. Richards, Secretary

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Office of Policy & Research

February 19, 2002

To: Representative John Edmonds, Chair
House Tax Committee

From: Richard Cram

Re: Department of Revenue Testimony in Support of House Bill 2649

Explanation and Purpose of House Bill 2649

House Bill 2649 would give the Secretary of Revenue authority to adopt rules and regulations necessary to administer the provisions of Chapters 41 and 79 of Kansas Statutes Annotated. The bill also contains a "grandfather" provision that existing regulations of the Secretary of Revenue shall continue to be in effect until otherwise revised or nullified. Chapter 41 is entitled "Intoxicating Liquors and Beverages." Chapter 79 is entitled "Taxation." Chapter 41 concerns such subjects as the Kansas liquor control act, the Division of Alcohol Beverage Control, liquor licensing, liquor warehouses, the gallonage tax, reporting requirements for manufacturers and wholesalers, prohibited acts and penalties, liquor by the drink regulation and licensure, and cereal malt beverages. Chapter 79 concerns a large variety of different taxes administered by the Department (or Divisions thereof), including property tax, privilege tax, Kansas estate tax, income tax, sales and use tax, various other excise taxes and several other miscellaneous kinds of taxes.

Background

The 2000 Kansas Legislature made several revisions and additions to the withholding tax laws in Sections 7 through 17 of Senate Bill 226, L. 2000, ch. 184, Kansas Session Laws. Many of these revisions were recommended by the Department. The withholding tax laws are set forth in the Kansas withholding and declaration of estimated tax act, K.S.A. 79-3294, *et seq.* Following enactment of this legislation, the Department submitted several proposed withholding tax regulations for use in administering withholding tax laws K.S.A. 2000 Supp. 79-32,100a and 79-32,100d for review by the Department of Administration and the Attorney General, pursuant to the procedures set forth in K.S.A. 77-420. The Department was advised by the Attorney General that the Department lacked authority to adopt regulations for K.S.A. 2000 Supp. 79-32,100a and 79-32,100d. K.S.A. 77-420(c) prohibits a rule or regulation from being filed with the Secretary of State unless the Attorney General finds that the regulation "is within the authority conferred by law on the state agency submitting the same." Under K.S.A. 77-417, the Secretary of State is required to endorse each rule and regulation filed, and publish those regulations. Therefore, until the Attorney General determines that the Secretary of Revenue has authority to adopt withholding tax regulations, the Department is unable obtain approval and

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publication of regulations needed for administering the changes made to the withholding tax statutes in 2000.

Numerous statutes give the Secretary (or other Department officials) express authority to adopt rules and regulations concerning particular subjects, such as K.S.A. 41-210, 41-714 and 41-1119 (liquor control act); K.S.A. 75-5203(e) (administrative functions of the Division of Taxation); K.S.A. 79-1483 (property tax); K.S.A. 79-6a12 (motor carrier property tax); K.S.A. 79-15,117 (Kansas estate tax); K.S.A. 79-3236 (income tax); K.S.A. 79-3618 (sales tax); K.S.A. 79-3326 (cigarettes and tobacco products); K.S.A. 79-34,112 and 3419 (motor fuel tax); K.S.A. 79-4708 (bingo act); and K.S.A. 79-5125 (motor vehicle property tax). Although arguably, the Secretary should already have rule and regulation adoption authority for withholding taxes through K.S.A. 79-3236, which provides rule adoption authority for income tax, the Attorney General has concluded that no such authority exists for K.S.A. 2000 Supp. 79-32,100a and 79-32,100d.

The Department cannot effectively administer the taxes it has been given the responsibility to administer without rule and regulation adoption authority. This amendment is intended to give the Secretary the authority to adopt regulations concerning any tax set forth in Chapters 41 or 79 of Kansas Statutes Annotated and administered by the Department, in order to avoid future situations in which the Department may propose regulations for particular taxes administered by the Department, and have its authority to do so questioned when such authority is not otherwise expressly mentioned within the particular statute at issue.

Request for Amendment to House Bill 2649

The Department sought the Attorney General's input concerning House Bill 2649. Julene L. Miller of the Attorney General's Office responded with the some suggested changes to the text of House Bill 2649. Those suggested changes are attached. None are substantive. The Department requests that House Bill 2649 be amended to reflect the changes suggested by the Attorney General.

HOUSE BILL No. 2649

By Committee on Taxation

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AN ACT relating to taxation; concerning rule and regulation authority of the secretary of revenue.

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

Section 1. 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. 2. This act shall take effect and be in force from and after its publication in the statute book.

and enforce

these tax and liquor control

that the secretary has been charged with overseeing

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Office of Policy & Research

February 19, 2002

To: Representative John Edmonds, Chair
House Tax Committee

From: Richard Cram

Re: Department of Revenue Testimony in Support of House Bill 2650

Background

K.S.A. 79-3226 describes the administrative appeals process once the Department has assessed tax or has denied a refund request in an income or sales tax matter. The Department must give the taxpayer written notice of the assessment or denial of the refund request. The taxpayer has 60 days thereafter to request in writing an informal conference with the Secretary or the Secretary's Designee. The purpose of the informal conference is to review and reconsider the facts and issues underlying the assessment or refund denial, in an informal, non-adjudicative setting. The Secretary or Secretary's Designee "shall issue" a written final determination within 270 days of the date of the taxpayer's request for an informal conference, unless the taxpayer and the Department agree in writing to an extension of that deadline. The written final determination can be appealed to the Board of Tax Appeals (BOTA). K.S.A. 79-3226 further provides that if the Secretary or Secretary's Designee has not issued a written final determination within the 270 days (assuming no extension agreement exists), then the taxpayer may appeal to BOTA.

K.S.A. 2001 Supp. 74-2438 sets forth the procedures and deadlines that must be followed when a final determination is appealed to BOTA. The taxpayer has 30 days after the final determination was issued to appeal it to BOTA by filing a notice of appeal with BOTA and the Secretary or Secretary's Designee. If the taxpayer fails to file an appeal within the 30 days, BOTA lacks jurisdiction to hear the appeal.

What if a situation arises in which the Secretary or Secretary's Designee has not issued a final determination, but 270 days from the request for the informal conference has passed, and there is no extension agreement in place? K.S.A. 79-3226(a) provides that the taxpayer may appeal to BOTA, under those circumstances. However, is there any time limit on initiating the appeal to BOTA? K.S.A. 2001 Supp. 74-2438 could be read as requiring the taxpayer to file the notice of appeal not more than 30 days following expiration of 270 days from the request for informal conference. Also, once the 270 days expires, does the Secretary or Secretary's Designee have the ability to issue a final determination, if the taxpayer has not yet initiated an appeal to BOTA?

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BOTA has interpreted K.S.A. 79-3226(a) as giving the taxpayer the option to appeal to BOTA at anytime after 270 days has expired from the request for informal conference, assuming no extension agreement is in effect and no final determination has been issued. BOTA does not read K.S.A. 2001 Supp. 74-2438 as requiring the appeal to be initiated within 30 days of expiration of 270 days from the request for informal conference, when no final determination has been issued. Also, the Secretary or Secretary's Designee can issue a final determination after 270 days from the request for informal conference, even when no extension agreement is in place. However, BOTA's interpretation has not yet been tested in the appellate courts.

The Department believes that both K.S.A. 79-3226(a) and K.S.A. 2001 Supp. 2438 need to be clarified to reflect BOTA's interpretation, *i.e.*, that whenever the Secretary or Secretary's Designee has not issued a final determination before expiration of 270 days from the request for informal conference, the taxpayer can appeal the matter to BOTA at any time, if there is no extension agreement in place. Also, the Secretary or Secretary's Designee may still issue a final determination after the 270 days has passed, if the taxpayer has not already appealed to BOTA. Without these clarifications, the risk exists that an appellate court could, in the future, read these statutes differently than BOTA and deny the existence of appellate jurisdiction after 30 days has expired following the 270 days, if no final determination was issued.

Explanation and Purpose of House Bill 2650

Section 1 of House Bill 2650 proposes to amend K.S.A. 2001 Supp. 74-2438 to add the following:

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.

This is intended to clarify that a taxpayer will not be subject to the 30-day time limit for initiating an appeal, set forth in K.S.A. 2001 Supp. 74-2438, discussed above, that otherwise could apply.

Section 2 of House Bill 2650 would amend the following language in K.S.A. 79-3226(a) to clarify that the Secretary or Secretary's Designee can still issue a final determination after expiration of 270 days from the date of the request for informal conference, if the taxpayer has not yet appealed the matter to BOTA, and assuming no extension agreement is in effect:

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.

This change also clarifies that when the Secretary or Secretary's Designee has not issued a final determination after 270 days from the request for informal conference and no extension agreement is in effect, the taxpayer may appeal to BOTA at any time thereafter, without the risk that BOTA would lose jurisdiction of the appeal after 30 days following expiration of the 270-day period.

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February 19, 2002

To: Representative John Edmonds, Chair
House Tax Committee

From: Richard Cram

Re: Department of Revenue Testimony in Support of House Bill 2651

Background

Under current law, pursuant to K.S.A. 79-3609(b) and K.A.R. 92-19-49a (copy attached), the retailer must file the sales tax refund claim with the Department. Consumers are not permitted to file sales tax refund claims directly with the Department, except in the limited circumstances set forth in K.S.A. 79-3650. If, for example, a refund is due for sales tax paid on an item not subject to sales tax, the consumer should seek the refund from the retailer that sold the item to the consumer and collected the sales tax. The retailer will then refund the sales tax to the consumer and file the refund claim with the Department with proof that the refund has been made to the consumer, or rather than refunding the sales tax to the consumer up front, the retailer may file the refund claim with the Department, along with proof of a written agreement between the retailer and consumer that the refund check from the Department will be made payable to both the retailer and consumer.

K.S.A. 79-3650 sets forth the limited circumstances when a consumer may file a sales tax refund claim directly with the Department: (1) the consumer paid the sales tax directly to the Department; (2) the retailer refused or was unavailable to refund the tax; (3) the retailer did not act upon the refund claim in a timely manner (K.A.R. 92-19-49a(i)(2) interprets "timely" as within 3 months of submission); or (4) the consumer is a business registered to collect and remit sales tax, and it is discovered during the Department's audit of the business that sales tax was paid on items not subject to sales tax, if the consumer provides documentation that the consumer will not request a duplicate refund through the vendor.

There are many reasons for limiting the circumstances when consumers can file sales tax refund claims directly with the Department. Under K.S.A. 79-3604, the retailer is legally obligated to collect sales tax from the consumer and remit it to the Department. If the retailer fails to collect sales tax on items sold that are subject to sales tax, the Department can impose liability for the uncollected sales tax on the retailer (although the Department also has the option of proceeding directly against the consumer purchasing such items). Since the retailer is legally liable for reporting and payment of the sales tax, the refund of any sales tax collected and remitted by the retailer on items not subject to sales tax should flow through that retailer, so that the retailer's sales tax account can be properly adjusted. In addition, the retailer will have much

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of evidence necessary to prove the validity of the refund claim, such as the documentation to show the items on which sales tax was collected, and the amounts and dates when the sales tax was collected and remitted to the Department. Without such documentation, the refund claim cannot be processed. From a practical standpoint, in a situation in which one retailer may have numerous customers seeking refund claims, it is more efficient for the Department to process those refund claims through one retailer, rather than dealing with separate claims from each consumer, particularly when the retailer has most, if not all of the information needed to process the refund claims, and the retailer understands the documentation and proof needed to support the claims.

Some consumers, primarily businesses, would prefer to file sales tax refund claims directly with the Department, rather than going through their vendors. As a result of a reverse audit, a business may identify several sales tax refund claims concerning many separate transactions over a period of time involving several different vendors. Alternatively, the business may have several sales tax refund claims that arise from one transaction involving many different vendors providing different parts to the transaction (such as a construction contract). The business may prefer to submit all of these claims to the Department in one package, rather than as separate claims through several different vendors. Under current law, the business should seek the refunds from each vendor, unless the vendor "refuses" to pay the refund claim or is no longer in business. House Bill 2651 would permit such package refund claims, so long as the business met the requirements in the bill, explained below.

Explanation and Purpose of House Bill 2651

House Bill 2651 would expand the circumstances when a consumer can file a sales tax refund claim directly with the Department, rather than through the retailer. The Department will accept the filing of a sales tax refund claim from a consumer if the consumer provides the Department a notarized statement to the Department from the retailer stating that the retailer will not claim a refund of the same tax included in the consumer's refund request, agrees to provide the consumer with the documentation in the retailer's possession needed to prove or support the refund claim, has remitted to the state the sales tax sought to be refunded, and has not or will not take a credit for such tax. If the retailer provides false information in the statement, the retailer is subject to penalties under K.S.A. 2001 Supp. 79-3915(h), which provides:

In addition to all other penalties provided by this section, any person who willfully fails to make a return or to pay any tax imposed under the Kansas retailers' sales tax act, or who makes a false or fraudulent return, or fails to keep any books or records prescribed by this act, or who willfully violates any regulations of the secretary of revenue, for the enforcement and administration of this act, or who aids and abets another in attempting to evade the payment of any tax imposed by this act, or who violates any other provision of this act, shall, upon conviction thereof, be fined not less than \$500, nor more than \$10,000, or be imprisoned in the county jail not less than one month, nor more than six months, or be both so fined and imprisoned, in the discretion of the court.

Under this proposed new circumstance for accepting sales tax refund claims directly from consumers, the consumer will need to obtain from the retailer and submit to the Department the same information that the Department would have received from the retailer, had the retailer submitted the refund claim, in addition to assurances from the retailer that the retailer has remitted the tax to the Department and will not be claiming a refund of the same tax.

House Bill 2651 deletes K.S.A. 79-3650(c) as a circumstance when consumer sales tax refund claims would be accepted by the Department. The proposed revision to K.S.A. 79-3650(a)(4), discussed above, disposes of the need to allow for consumer sales tax refund claims to be filed with the Department during an audit. At anytime, whether an audit is in progress or not, a consumer may submit a sales tax refund claim directly to the Department, if the requirements set forth in the proposed revisions to K.S.A. 79-3650(a)(4) are met.

Request for Amendment to House Bill 2651

The Department requests one amendment to House Bill 2651, shown on the attachment. At line 16 in Section 1, the words "refused or" in K.S.A. 79-3650(a)(2) should be deleted. The change to K.S.A. 79-3650(a)(4) in Section 1 is intended to eliminate the retailer's refusal to refund as a circumstance when the Department would accept a sales tax refund claim directly from a consumer. Interpretation of what constitutes a retailer's refusal to refund has been problematic. Given the additional circumstance set forth in House Bill 2651 to allow consumers to file sales tax refund requests directly with the Department, the retailer's refusal to refund circumstance is not needed and should be deleted.

Kansas Administrative Regulations

Regulation Number: **92-19-49a**
Agency Title: **KANSAS DEPARTMENT OF REVENUE**
Article Title: **Kansas Retailers' Sales Tax**
Tax Type: **Kansas Retailers' Sales Tax**
Brief Description: **Refunds and credits.**
Keywords:

Body:

~~92-19-49a~~ Refunds and credits. (a) A claim for a refund of sales or compensating tax shall be treated as an application for the adjustment or amendment of a sales or compensating tax return. Refund claims shall be made in writing and shall specify the grounds for the claim. Claims shall be filed within three years of the date on which payment of the tax was due. As used here, a refund claim includes a claim for credit.

(b) When a retailer files a claim for refund, the claim shall include proof that the retailer either credited or repaid the tax to the consumer, entered into a written agreement with the consumer that allows any payment by the department to be made jointly to the retailer and consumer, or did not collect the tax from the consumer that the retailer reported and remitted to the state. Proof that the retailer has credited or repaid the tax to the consumer shall be in the form of a canceled check or an irrevocable credit memo issued to the consumer. Until proof of credit, repayment, agreement or non-collection is submitted, no refund shall be issued to a retailer who collected tax on a nontaxable sale.

(c) Retailers shall be entitled to reimbursement for taxes reported on their returns from sales of goods when goods are later returned to them by a consumer. When a retailer repays a consumer for returned goods, the retailer may claim either a refund or a deduction for taxes that were reported on the initial sale. The retailer's repayment to the consumer may be by credit or by refund and shall include the full selling price of the goods and the associated sales taxes. A retailer may take the deduction during the reporting period in which the consumer is repaid or may apply to

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the department for a refund for the same period. If a deduction is taken, any credit balance shall be carried forward on subsequent returns until fully used. Returned goods shall not include repossessed goods, which are discussed in K.A.R. 92-19-10.

(d) A consumer shall be eligible to file a refund claim with the department for consumers' compensating tax, or for retailers' sales tax that the consumer reported and paid directly to the department under the provisions of K.S.A. 79-3604, and amendments thereto. Except as provided in subsections (i) and (j), a consumer shall not otherwise be eligible to file a refund claim for retailers' sales tax or retailers' compensating tax since the retailer, not the consumer, is the taxpayer for purposes of these taxes. Each consumer shall request a refund of retailers' sales tax or retailers' compensating tax from the retailer that charged and collected the tax from them at the time of the sale.

(e) Each claim for a refund shall specify the name of the retailer and consumer, the amount of tax claimed to have been overpaid, the date of the sale or sales that generated the refund claim, the reporting period in which the tax was remitted to the state, and the specific grounds for the refund claim. Refund claims shall be submitted with supporting documentation, including copies of canceled checks, paid invoices, contracts, and other billing and payment documents. If the department requests additional documentation to support the refund claim and the documentation is not provided within 30 days of the request, the refund claim may be denied. The department may extend the time for providing additional documentation for a definite period beyond 30 days if a request for extension of time is received within the 30 day period and good cause is shown. All records that support the claim shall be made available to the department for inspection upon request.

(f) Each claim for refund shall be reviewed by the department and its validity determined. Each claimant shall be notified in writing of the determination and, if the claim is denied, shall be provided with a written description of the method by which administrative review may be requested. A denial of a claim for refund shall be final, unless the claimant files a timely request for administrative review. If a claimant does not receive notice of the department's action within six months of filing the claim, the

claimant may demand that an informal conference be scheduled or may consider the claim disallowed and bring an action in district court for the refund as provided at K.S.A. 79-3609 and K.S.A. 79-3230(d), and amendments thereto. If a demand is made for an informal conference, a date for the conference shall be scheduled within 30 days of receipt of the demand.

(g) If the department determines that a refund is due, the amount shall first be set off against any state liability of the person to whom the refund is ultimately due. A written notice of the setoff shall be provided to the person. If the person has no outstanding state liability, the refund or credit shall be issued. A retailer shall be considered the person to whom the refund is ultimately due under this subsection if the retailer previously credited or paid the tax to the consumer.

(h) Except for claims involving returned goods, a retailer shall not take credit on a return for a refund claim until the department has approved the claim and notified the retailer of its action in writing. To utilize a refund credit, the retailer shall attach a copy of the notification to a subsequent tax return and use the credit to offset the amount being reported. Any credit balance shall be carried forward on subsequent returns until fully used.

(i)(1) A refund claim submitted directly by a consumer that is not undergoing a field audit may be reviewed by the department if the claim is accompanied by an affidavit of the consumer verifying any of the following:

- (A) the retailer is no longer in business;
- (B) the retailer has moved, and the consumer cannot locate the retailer;
- (C) the retailer is insolvent and is financially unable to make the refund; or
- (D) the consumer has attempted in good faith to obtain a refund from the retailer and can document that the retailer has refused or is unable to refund the tax or did not act on the request in a timely manner.

The affidavit shall identify the date that the consumer first sent the request to the retailer and the materials that were included with the request. Copies of the documentation shall be submitted with the affidavit. The department may contact the retailer to confirm the claims made by the consumer and that the consumer acted in

good faith in seeking the refund from the retailer. As used in this subsection, "good faith" means honesty in fact and a reasonable attempt to secure the refund from the retailer.

(2) As used in K.S.A. 79-3650, and amendments thereto, "timely manner" means within three months from the date that the consumer first submitted the refund request to the retailer. As used in K.S.A. 79-3650, and amendments thereto, "proper showing" means the affidavit of the consumer and the materials and documentation needed to support a refund claim, as set forth in subsection (e) of this regulation, except for the reporting period of the retailer. A consumer shall make a request to the department within six months of the date that the consumer mailed the original request to the retailer, in order to have the statute of limitations waived for reporting periods as allowed under this provision.

(3) If the director finds that the affidavit and documentation provided to the retailer are insufficient to support a refund claim, the claim shall be denied and the claimant notified in writing of the determination and the method by which an administrative review may be requested. The statute of limitations shall not be extended for any request sent to a retailer that contained insufficient documentation to support the refund claim.

(4) If the director finds that a consumer submitted a properly documented refund request to a retailer that was not acted upon in a timely manner, the time for filing the request with the department may be extended by the director by the time attributed to the delay caused by the retailer.

(5) Each retailer shall have a continuing duty to correct errors in returns on file with the department, including filing amended returns that reduce reported receipts and allow consumers to secure the refund of taxes that were overpaid to the retailer. If a retailer has refused or delayed refunding a tax that the department has determined should be refunded to a consumer, the retailer may be contacted by the department and directed to file an amended return that correctly reflects the refund due the consumer.

(j)(1) If, during the course of a field audit of a business as a consumer, it is

determined that the business paid Kansas sales or compensating tax to a retailer on a transaction that is not subject to tax, the business may apply directly to the department for a setoff or refund of the tax that it overpaid notwithstanding the other provisions of this regulation if the business is currently registered to collect and remit tax and if the business provides the director with an affidavit signed by an owner or corporate officer that assures the business has not and will not request a duplicate refund through the retailer. A business shall not be allowed to claim a setoff or refund of taxes that the business collected from a consumer.

(2) If a business pays a liability or accepts a refund that was determined under an audit assessment that applied a sampling technique to an established population, the population that served as the base for the sampling portion of the assessment shall be closed to all additional assessments and refunds.

(3) In any case in which the department has erroneously refunded or credited sales or compensating tax, a notice of tax assessment may be issued by the department within three years of the date the refund was made or, if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact, within two years of the date of discovery of the fraud or misrepresentation. The amount of the assessment shall be limited to the amount of the erroneous refund, unless fraud is involved. (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3609, 79-3650; effective June 26, 1998.)

HOUSE BILL No. 2651

By Committee on Taxation

1-17

AN ACT relating to sales taxation; concerning direct refund requests; amending K.S.A. 79-3650 and repealing the existing section.

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

Section 1. 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 (e)~~ 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 refunded; 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~~

1 ~~duplicate refund through the vendor.~~
2 Sec. 2. K.S.A. 79-3650 is hereby repealed.
3 Sec. 3. This act shall take effect and be in force from and after its
4 publication in the statute book.

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