

CHAPTER 123
SENATE BILL No. 430

AN ACT concerning taxation; relating to income tax credits, limitations; intangibles tax, filing procedure; electronic filing of returns, reports or other documents; willful failure to collect taxes or to commit other violations; streamlined sales and use tax agreement conformity; establishing service fee for taxpayers on installment payment plans for delinquent tax liability; amending K.S.A. 12-1,104 and 79-32,107 and K.S.A. 2009 Supp. 74-50,154, 74-8133, 74-99c09, 79-2971, 79-3298, 79-32,100c, 79-32,211, 79-32,264, 79-3607, 79-3609, 79-3643, 79-3651, 79-3666 and 79-3672 and repealing the existing sections.

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

Section 1. K.S.A. 2009 Supp. 74-50,154 is hereby amended to read as follows: 74-50,154. (a) As used in this act: (1) "Business support services" means business counseling, technical assistance and business planning services provided to existing or prospective small businesses or entrepreneurs;

(2) "contributions" means and includes the donation of cash or property other than used clothing in an amount or value of \$250 or more. Contributions shall be valued as follows:

(A) Stocks and bonds contributed shall be valued at the stock market price on the date of transfer;

(B) personal property items contributed shall be valued at the lesser of the item's fair market value or cost to the donor and may be inclusive of costs incurred in making the contribution. Such value shall not include sales tax;

(C) contributions of real estate are allowable for credit only when title of such real estate is in fee simple absolute and is clear of any encumbrances; and

(D) the amount of credit allowable shall be based upon the lesser of two current independent appraisals conducted by state licensed appraisers;

(3) "department" means the department of commerce;

(4) "entrepreneur" means an individual creating a new business, service or product;

(5) "region" means multi-county areas as defined by the secretary of commerce;

(6) "regional business development fund" means an authorized and audited fund that is created by taxpayer contributions, interest income and investment income and is managed by the regional foundation board of directors for the purposes of economic and leadership development in the region;

(7) "regional foundation" means any organization in Kansas that demonstrates capacity to provide economic development services to regions as defined by this act, and: (A) Has obtained a ruling from the internal revenue service of the United States department of treasury that such organization is exempt from income taxation under the provisions of section 501(c)(3) or 501(c)(6) of the federal internal revenue code;

(B) has been designated as a certified development company by the United States small business administration;

(C) has been designated as an economic development district by the United States department of commerce's economic development administration;

(D) has been organized as a regional planning commission under K.S.A. 12-744 et seq., and amendments thereto, or its predecessor, K.S.A. 12-716 et seq., and amendments thereto; or

(E) is incorporated in the state of Kansas as a nonstock, nonprofit corporation;

(8) "regional leadership development" means training and education that enable a region to develop community leadership that strengthens the economic and social environment in that region;

(9) "rural community" means any city having a population of fewer than 50,000 or except as otherwise provided, any unincorporated area. Unincorporated areas within any county having a population of more than 100,000 are not eligible;

(10) "secretary" means the secretary of the department of commerce;

(11) "small business" means an independently owned and operated business having fewer than 100 full-time equivalent employees;

(12) "taxpayer" means: (A) Any business entity authorized to do busi-

ness in the state of Kansas which is subject to the state income tax imposed by the provisions of the Kansas income tax act;

(B) any individual subject to the state income tax imposed by the provisions of the Kansas income tax act;

(C) any national banking association, state bank, trust company or savings and loan association paying an annual tax on its net income pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated; or

(D) any insurance company paying the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto; and

(13) "technology improvements" means a project that results in the ability of the region to enhance service in areas, including broadband access, web site creation, wireless internet services, computer programming, computer servers, computer networks, computer databases, electronic training modules, electronic media and any other technological areas deemed eligible by the secretary.

(b) For taxable years commencing after December 31, 2004, any taxpayer contributing to a regional foundation designated by the secretary of commerce, shall be allowed a credit, as provided in this act, against the tax imposed by the Kansas income tax act, the tax on net income of national banking associations, state banks, trust companies or savings and loan associations imposed under article 11 of chapter 79 of the Kansas Statutes Annotated, or the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, if the proposal of the regional foundation is approved pursuant to this act.

(c) (1) On December 31, 2007, June 30, 2008, and each June 30 thereafter, each regional foundation shall transfer 5% of funds raised in the previous fiscal year from the marketing of the rural business tax credits to be credited to the enterprise facilitation fund created in K.S.A. 2009 Supp. 74-50,155, and amendments thereto.

(2) The secretary of commerce may adopt rules and regulations for the disbursement of regional foundation funds to the enterprise facilitation fund.

(d) (1) The secretary of commerce is hereby authorized to adopt rules and regulations for establishing criteria for evaluating proposals to designate regional foundations as defined by this act with the assistance of the secretary of revenue.

(2) The proposal shall set forth the program to be conducted, why the program is needed, the estimated amount to be invested in the program, composition of the board that shall be making investment decisions, policies stating the organization shall offer services to all counties in that region and the plans for implementing the program.

(3) The secretary of commerce shall select regional foundations pursuant to rules and regulations adopted pursuant to subsection (d)(1) to use the sale of credits to establish regional business development funds.

(4) The total amount of credits allowed under this act shall not exceed \$2,500,000 for fiscal year 2005; \$2,500,000 for fiscal year 2006; ~~and~~ \$2,000,000 per year for fiscal years 2007 through, and including, 2010, *and fiscal year 2012, and \$1,800,000 for fiscal year 2011*. Each region as defined by this act shall receive an equal share of this allocation.

(5) Any credits not sold by such regional foundations shall be reclaimed by the secretary from such region and redistributed to other regions that sold all credits previously issued.

(6) The secretary shall annually review and approve or disapprove the proposal of each designated regional foundation for continued eligibility for tax credits. The department of commerce retains that right to reclaim credits in such cases the regional foundation closes or there is demonstrated violation of the organization's policies. Changes to the investment policies of each regional foundation are subject to approval of the secretary.

(e) Each regional foundation shall administer a regional business development fund. The sums generated by contributions to each regional business development fund are intended to be distributed to qualified entrepreneurs for the purposes of economic and leadership development in the region. Such sums shall be allocated by each regional foundation as follows:

(1) Not less than 60% of such funds may be allocated for job creation or retention;

(2) not more than 10% of such funds shall be allocated for administrative costs in overseeing particular projects; and

(3) the remaining funds may be allocated towards other eligible activities as provided in subsection (f) in a manner that fits the region's priorities and needs.

(f) Funds in the regional business development funds may be utilized by the regional foundation for one or more of the following eligible activities:

- (1) Business start-ups;
- (2) business expansion;
- (3) business retention;
- (4) business support services;
- (5) regional leadership development;
- (6) technology improvements; and
- (7) administrative services.

(g) All interest generated on idle funds administered by the regional foundation shall be used by the foundation's board in accordance with subsections (e) and (f).

(h) Any regional foundation may increase or decrease the allocation percentages set forth in subsection (e) only upon approval of such adjustments by the secretary.

(i) (1) The amount of credit allowed pursuant to this act, shall not exceed 75% of the total amount contributed during the taxable year by the taxpayer to a regional foundation approved pursuant to this act.

(2) If the amount of the credit allowed by this act, exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount shall be refunded to the taxpayer.

(j) The provisions of this act shall be applicable to all taxable years beginning after December 31, 2004.

Sec. 2. K.S.A. 2009 Supp. 74-8133 is hereby amended to read as follows: 74-8133. (a) A credit against the tax imposed by article 32 of chapter 79 of the Kansas Statutes Annotated on the Kansas taxable income of an angel investor and against the tax imposed by K.S.A. 40-252, and amendments thereto, shall be allowed for a cash investment in the qualified securities of a qualified Kansas business. The credit shall be in a total amount equal to 50% of such investors' cash investment in any qualified Kansas business, subject to the limitations set forth in subsection (b). This tax credit may be used in its entirety in the taxable year in which the cash investment is made except that no tax credit shall be allowed in a year prior to January 1, 2005. If the amount by which that portion of the credit allowed by this section exceeds the investors' liability in any one taxable year, beginning in the year 2005, the remaining portion of the credit may be carried forward until the total amount of the credit is used. If the investor is a permitted entity investor, the credit provided by this section shall be claimed by the owners of the permitted entity investor in proportion to their ownership share of the permitted entity investor.

(b) The secretary of revenue shall not allow tax credits of more than \$50,000 for a single Kansas business or a total of \$250,000 in tax credits for a single year per investor who is a natural person or owner of a permitted entity investor. No tax credits authorized by this act shall be allowed for any cash investments in qualified securities for any year after the year 2016. The total amount of tax credits which may be allowed under this section shall not exceed \$4,000,000 during the tax year 2007 and \$6,000,000 for tax year 2008 and each tax year thereafter, *except that for tax year 2011, the total amount of tax credits which may be allowed under this section shall not exceed \$5,000,000.* The balance of unissued tax credits may be carried over for issuance in future years until 2016.

(c) A cash investment in a qualified security shall be deemed to have been made on the date of acquisition of the qualified security, as such date is determined in accordance with the provisions of the internal revenue code.

(d) No investor shall claim a credit under this section for cash investments in Kansas venture capital, inc. No Kansas venture capital company shall qualify for the tax credit for an investment in a fund created by articles 81, 82, 83 or 84 of chapter 74 of the Kansas Statutes Annotated.

(e) Any investor who has not owed any Kansas income tax under the provisions of article 32, chapter 79 of the Kansas Statutes Annotated for the immediate past three taxable years, who does not reasonably believe that it will owe any such tax for the current taxable year and who makes a cash investment in a qualified security of a qualified Kansas business shall be deemed to acquire an interest in the nature of a transferable

credit limited to an amount equal to 50% of this cash investment. This interest may be transferred to any natural person of net worth, as defined in 17 C.F.R. 230.501(a) as in effect on the effective date of this act whether or not such person is then an investor and be claimed by the transferee as a credit against the transferee's Kansas income tax liability beginning in the year provided in subsection (a). No person shall be entitled to a refund for the interest created under this section. Only the full credit for any one investment may be transferred and this interest may only be transferred one time. A credit acquired by transfer shall be subject to the limitations prescribed in this section. Documentation of any credit acquired by transfer shall be provided by the investor in the manner required by the director of taxation.

(f) The reasonable costs of the administration of this act, the review of applications for certification as qualified Kansas businesses and the issuance of tax credits authorized by this act shall be reimbursed through fees paid by the qualified Kansas businesses and the investors or the transferees of investors, according to a reasonable fee schedule adopted by the corporation.

Sec. 3. K.S.A. 2009 Supp. 74-99c09 is hereby amended to read as follows: 74-99c09. (a) Any money received by the center from any source shall be maintained in interest-bearing accounts in Kansas banks or Kansas savings and loan associations. Any accounts so maintained shall be administered by the center for entrepreneurship under guidelines developed and implemented by the center and approved by the secretary of commerce.

(b) The Kansas center for entrepreneurship shall be subject to audit by the legislative division of post audit in accordance with the provisions of the legislative post audit act.

(c) A credit against the tax imposed by the Article 32, Chapter 79 of the Kansas Statutes Annotated on the Kansas taxable income of a contributor and against the tax imposed by K.S.A. 40-252, and amendments thereto, shall be allowed for a contribution to the Kansas center for entrepreneurship. The credit shall be a total maximum amount equal to 75% of a contributor's donation to the Kansas center for entrepreneurship, subject to the limitation set forth. This tax credit may be used in its entirety in the taxable year in which the contribution is made. The provisions of this section shall be applicable to all taxable years beginning after December 31, 2004. If the amount by which that portion of the credit allowed by this section exceeds the contributor's liability in any one taxable year, the remaining portion of the credit may be carried forward until the total amount of the credit is used. If the contributor is a corporation having an election in effect under subchapter S of the federal internal revenue code or a partnership, the credit provided by this section shall be claimed by the shareholders of these corporations or the partners of a partnership in the same manner as these shareholders or partners account for their proportionate shares of the income or loss of these corporations or partnerships.

(d) The secretary of revenue shall not allow tax credits of more than \$50,000 that are attributable to an individual contributor in the Kansas center for entrepreneurship each year. In no event shall the total amount of tax credits allowed under this section exceed \$2,000,000 for any one fiscal year, *except that for fiscal year 2011, the total amount of credits allowed under this section shall not exceed \$1,800,000.*

(e) The Kansas center for entrepreneurship, along with the department, shall develop a system for application for registration of an authorization of tax credits authorized pursuant to this act and shall control distribution of all tax credits to contributors pursuant to this act. The Kansas center for entrepreneurship, along with the department, shall also develop rules for the administration of and disbursements from its accounts.

(f) The Kansas center for entrepreneurship shall distribute funds to regional or local community seed capital funds or economic development agencies based on the following criteria: (1) The organization can provide a 40% match; (2) the organization provides a plan that assures funds will be used as seed capital for qualified entrepreneurs; (3) the funds will be used in a distressed or rural community; or (4) other criteria as deemed necessary by the Kansas center for entrepreneurship.

Sec. 4. K.S.A. 2009 Supp. 79-32,211 is hereby amended to read as follows: 79-32,211. (a) For all taxable years commencing after December

31, 2006, there shall be allowed a tax credit against the income, privilege or premium tax liability imposed upon a taxpayer pursuant to the Kansas income tax act, the privilege tax imposed upon any national banking association, state bank, trust company or savings and loan association pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, or the premiums tax and privilege fees imposed upon an insurance company pursuant to K.S.A. 40-252, and amendments thereto, in an amount equal to 25% of qualified expenditures incurred in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan by a qualified taxpayer if the total amount of such expenditures equal \$5,000 or more; or in an amount equal to 30% of qualified expenditures incurred in the restoration and preservation of a qualified historic structure which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code and which is not income producing pursuant to a qualified rehabilitation plan by a qualified taxpayer if the total amount of such expenditures equals \$5,000 or more. In no event shall the total amount of credits allowed under this section exceed \$3,750,000 for fiscal ~~years year 2010 and 2011~~. If the amount of such tax credit exceeds the qualified taxpayer's income, privilege or premium tax liability for the year in which the qualified rehabilitation plan was placed in service, as defined by section 47(b)(1) of the federal internal revenue code and federal regulation section 1.48-12(f)(2), such excess amount may be carried over for deduction from such taxpayer's income, privilege or premium tax liability in the next succeeding year or years until the total amount of the credit has been deducted from tax liability, except that no such credit shall be carried over for deduction after the 10th taxable year succeeding the taxable year in which the qualified rehabilitation plan was placed in service.

(b) As used in this section, unless the context clearly indicates otherwise:

(1) "Qualified expenditures" means the costs and expenses incurred by a qualified taxpayer in the restoration and preservation of a qualified historic structure pursuant to a qualified rehabilitation plan which are defined as a qualified rehabilitation expenditure by section 47(c)(2) of the federal internal revenue code;

(2) "qualified historic structure" means any building, whether or not income producing, which is defined as a certified historic structure by section 47(c)(3) of the federal internal revenue code, is individually listed on the register of Kansas historic places, or is located and contributes to a district listed on the register of Kansas historic places;

(3) "qualified rehabilitation plan" means a project which is approved by the cultural resources division of the state historical society, or by a local government certified by the division to so approve, as being consistent with the standards for rehabilitation and guidelines for rehabilitation of historic buildings as adopted by the federal secretary of interior and in effect on the effective date of this act. The society shall adopt rules and regulations providing application and approval procedures necessary to effectively and efficiently provide compliance with this act, and may collect fees in order to defray its approval costs in accordance with rules and regulations adopted therefor; and

(4) "qualified taxpayer" means the owner of the qualified historic structure or any other person who may qualify for the federal rehabilitation credit allowed by section 47 of the federal internal revenue code.

If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code, a partnership or a limited liability company, the credit provided by this section shall be claimed by the shareholders of such corporation, the partners of such partnership or the members of such limited liability company in the same manner as such shareholders, partners or members account for their proportionate shares of the income or loss of the corporation, partnership or limited liability company, or as the corporation, partnership or limited liability company mutually agree as provided in the bylaws or other executed agreement. Credits granted to a partnership, a limited liability company taxed as a partnership or other multiple owners of property shall be passed through to the partners, members or owners respectively pro rata or pursuant to an executed agreement among the partners, members or owners documenting any alternate distribution method.

(c) Any person, hereinafter designated the assignor, may sell, assign, convey or otherwise transfer tax credits allowed and earned pursuant to

subsection (a). The taxpayer acquiring credits, hereinafter designated the assignee, may use the amount of the acquired credits to offset up to 100% of its income, privilege or premiums tax liability for either the taxable year in which the qualified rehabilitation plan was first placed into service or the taxable year in which such acquisition was made. Unused credit amounts claimed by the assignee may be carried forward for up to five years, except that all such amounts shall be claimed within 10 years following the tax year in which the qualified rehabilitation plan was first placed into service. The assignor shall enter into a written agreement with the assignee establishing the terms and conditions of the agreement and shall perfect such transfer by notifying the cultural resources division of the state historical society in writing within 90 calendar days following the effective date of the transfer and shall provide any information as may be required by such division to administer and carry out the provisions of this section. The amount received by the assignor of such tax credit shall be taxable as income of the assignor, and the excess of the value of such credit over the amount paid by the assignee for such credit shall be taxable as income of the assignee.

Sec. 5. K.S.A. 2009 Supp. 79-32,264 is hereby amended to read as follows: 79-32,264. (a) For tax years 2009 and 2010, for any tax credit provided under the following: K.S.A. 65-7107, 79-1117, 79-32,176, 79-32,177, ~~79-32,190~~ and 79-32,200 and K.S.A. 2009 Supp. ~~40-2246, 74-50,154, 74-50,173, 74-50,208, 74-8133, 74-8205, 74-99c09, 79-32,153, 79-32,160a, 79-32,181a, 79-32,182b, 79-32,196, 79-32,197, 79-32,201, 79-32,202, 79-32,204, 79-32,207, 79-32,211a, 79-32,212, 79-32,213, 79-32,215, 79-32,218, 79-32,222, 79-32,224, 79-32,229, 79-32,234, 79-32,239, 79-32,242, 79-32,244, 79-32,246, and 79-32,252, 79-32,261 and 79-32,262~~, and amendments thereto, *and if nonrefundable*, K.S.A. 79-32,261 *and 79-32,262, and amendments thereto, and for tax year 2009, for the tax credit provided under K.S.A. 2009 Supp. 74-99c09, and amendments thereto*, the total of any such credit or credits allowed against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79, article 11 of the Kansas Statutes Annotated, shall not exceed the lesser of 90% of the total amount of such credit or credits earned in a current tax year or claimed in a current tax year as a carry forward from a prior tax year, or 90% of the tax as computed prior to the allowance of any such credit or credits. Except as otherwise provided by subsections (c) and (d), the amount of such credit or credits that may be carried forward in any succeeding taxable year shall be reduced by an amount equal to the lesser of 10% of the total amount of such credit or credits earned in a current tax year or claimed in a current tax year as a carry forward from a prior tax year, or 10% of the tax as computed prior to the allowance of any such credits.

(b) For tax years 2009 and 2010, for any tax credit provided under K.S.A. ~~40-2246 and 79-32,190~~ and K.S.A. 2009 Supp. ~~79-32,206 and 79-32,210~~ ~~74-50,208, 79-32,206, 79-32,210 and 79-32,211a, and amendments thereto, and if refundable~~, K.S.A. 79-32,261 *and 79-32,262, and amendments thereto, and for tax year 2009, for the tax credit provided under K.S.A. 2009 Supp. 74-50,154, and amendments thereto*, the total amount of any credits refunded or allowed against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79, article 11 of the Kansas Statutes Annotated, shall not exceed 90% of the total amount of tax credit or credits earned, and the remaining portion of such tax credit or credits shall be lost.

(c) For any tax credit or credits earned pursuant to K.S.A. 79-32,160a, and amendments thereto, other than tax credits earned pursuant to subsection (e) of K.S.A. 79-32,160a, and amendments thereto, in a tax year prior to 2009 and carried forward from such prior tax year and claimed in tax years 2009 or 2010, any reduction in the amount of credit or credits that may be carried forward to any succeeding tax year determined pursuant to subsection (a), may be carried forward to any tax year after 2010, pursuant to the applicable carry-forward period provided in K.S.A. 79-32,160a, and amendments thereto.

(d) For any tax credit earned pursuant to subsection (e) of K.S.A. 79-32,160a, and amendments thereto, by a taxpayer qualified and certified

under the provisions of K.S.A. 74-50,131, and amendments thereto, who has received prior to June 1, 2009, written approval from the secretary of commerce of a certificate of intent to invest in a qualified business facility, any reduction in the amount of credit or credits that may be carried forward to any succeeding tax year determined pursuant to subsection (a), may be carried forward to any tax year after 2010, pursuant to the applicable carry-forward period provided in K.S.A. 79-32,160a, and amendments thereto.

(e) *For any tax credit or credits earned pursuant to K.S.A. 74-8133, and amendments thereto, any reduction in the amount of credit or credits that may be carried forward to any succeeding tax year determined pursuant to subsection (a) from tax years 2009 or 2010, may be carried forward to any tax year after 2010, pursuant to the applicable carry-forward period provided in K.S.A. 74-8133, and amendments thereto.*

Sec. 6. K.S.A. 12-1,104 is hereby amended to read as follows: 12-1,104. (a) Every taxpayer receiving earnings which are taxable under the provisions of this act shall file a return on or before ~~July 1 in the year 1983~~ *April 15 following the taxable year*, with the county clerk of the county in which the gross earnings has acquired situs ~~and on or before April 15 of each year thereafter with the director of taxation of the state department of revenue~~. Such return shall contain such information and be made upon forms prescribed ~~and provided~~ *and provided by the county clerk* by the director of taxation ~~and provided by the county clerk~~. ~~On or before June 30 of each year, the director of taxation shall certify to the county clerk of each county the amount of taxable earnings received by each taxpayer during the taxable year of the taxpayer ending in the preceding calendar year. The county clerk shall compute the tax due and payable on such taxable earnings of each taxpayer and shall certify such amount to the county treasurer. The director of taxation shall include forms prescribe to the county clerk the form for the making of such return and a current listing of each taxing subdivision imposing a tax on gross earnings derived from money, notes and other evidence of debt for which the listing has been received pursuant to subsection (d) of K.S.A. 12-1,101 by July 15 of the year preceding the year of imposition of the tax with each state income tax return distributed by the state department of revenue.~~

(b) A return listing the gross earnings of every resident conservatee which are taxable pursuant to this act shall be filed by the conservator of such conservatee. The return of every resident minor shall be filed by the minor's father, if living and of sound mind, but if such father is not living or is an incapacitated person, by the minor's mother or if neither the father or mother is living, by the person having possession or control of the minor's property.

A return listing the gross earnings of a resident trustee or cotrustee of a revocable trust created by a resident settlor which are taxable pursuant to this act shall be filed by the resident settlor. A return listing the gross earnings of a resident trustee or cotrustee of an irrevocable or testamentary trust created by a resident settlor or a resident decedent which are taxable pursuant to this act shall be filed by any beneficiary residing in this state who receives earnings from such trust, to the extent of such earnings, otherwise a return listing such gross earnings shall be filed by the resident trustee to the extent that such earnings are not distributed. A nonresident beneficiary shall not be obligated to file a return listing earnings taxable pursuant to this act nor shall the trustee be obligated to file a return listing the same to the extent they were distributed to a nonresident beneficiary. Where a resident trustee or cotrustee is acting under a revocable, irrevocable or testamentary trust of a nonresident settlor or nonresident decedent, the trustee shall not be required to file a return listing earnings taxable pursuant to this act, but any beneficiary of such trust, residing in this state, who receives or is entitled to receive such earnings from such trust shall be required to file a return. Any resident of this state including the settlor of a revocable trust who receives or is entitled to receive earnings taxable pursuant to this act from a trust, not having a situs in this state, shall file a return listing such resident's share of such earnings.

For the purposes of this act, a settlor of a revocable trust shall be deemed to be entitled to the gross earnings on money, notes and other evidence of debt of such trust whether or not such settlor actually receives the same and a beneficiary shall be deemed to be entitled to a share of such earnings if all or a specific part or percentage of the net income of

the trust must be distributed to such beneficiary or if the beneficiary may withdraw all or a specific part of the net income. If such beneficiary may receive earnings only on the exercise of discretion by the trustee or on the occurrence of an event outside of the beneficiary's sole control such beneficiary shall not be deemed to have received the earnings and shall file a return listing only earnings actually received. If earnings of a trust which are taxable pursuant to this act are accumulated and subsequently distributed in a different calendar year than the year in which received by the trust and if the same are reported as income under the revenue laws of Kansas and regulations promulgated thereunder, and if a return listing such earnings has not been filed by the trustees in the year in which earned, then a return listing such earnings shall be filed by such beneficiary in the year in which the same are reported under the revenue laws of Kansas, but otherwise a return listing the same shall not be filed. Where the beneficiary of any trust is required to file a return listing earnings which are taxable pursuant to this act and which are held in trust, such beneficiary for purposes of this act shall be deemed to have received or to be entitled to receive such beneficiary's pro rata share of the earnings without specific allocation, unless the trust provides otherwise, and based upon the proportion which the beneficiary's share of the earnings bears to the total earnings of the trust. A return listing gross earnings taxable under this act which belong to the estate of a resident decedent shall be filed by the executor or administrator. If the decedent is a nonresident, such executor or administrator shall not be required to file a return listing such gross earnings.

A return listing the gross earnings of persons, companies or corporations which are taxable pursuant to this act, whose assets are in the hands of receivers shall be filed by such receivers and a return listing the gross earnings belonging to a corporation, and subject to this act, shall be filed by some person designated for that purpose by such corporation.

A return listing the gross earnings which are taxable pursuant to this act which belong to a corporation, association or a partnership shall be listed by an agent or partner. Unless subject to tax by reason of K.S.A. 12-1,103, *and amendments thereto*, no return listing the gross earnings from money, notes and other evidence of debt collected or received by any agent or representative of any person, company, or corporation, which is to be transmitted immediately to such person, company or corporation, shall be filed by such agent or representative, but such agent or representative ~~shall~~, upon request, *shall* state under oath the amount of such money or credits and ~~to whom the same has~~ *the person, company or corporation to whom such money or credits have* been or is to be transmitted.

Taxes levied pursuant to this act shall be paid by the person or fiduciary required to file such return.

Sec. 7. K.S.A. 2009 Supp. 79-2971 is hereby amended to read as follows: 79-2971. (a) Any individual who is responsible for collection or payment of excise taxes 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, and amendments thereto, or for control, receipt, custody or disposal of funds due and owing under such acts who willfully fails to collect such tax, or account for and pay over such tax, or attempts in any manner to evade or defeat such tax or the payment thereof shall be personally liable for the total amount of the tax evaded, or not collected, or not accounted for and paid over, together with any interest and penalty imposed thereon. The provisions of this section shall apply regardless of the: (1) Relationship with the taxpayer held by such individual; (2) form under which the taxpayer conducts business, whether a sole proprietorship, partnership or corporation; or (3) dissolution of the business. *As used in this section, "willfully" has the same meaning as such term has for federal tax purposes in 26 U.S.C. 6672.*

(b) A notice of assessment issued to a responsible individual shall be considered to be a proceeding for the collection of the tax liability of the business. If the liability of the business is determined in a proceeding that has become final, any notice of assessment to a responsible individual must be issued within three years after the proceeding against the business became final.

(c) Within 60 days after the mailing of a notice of assessment to a responsible individual, the person assessed may request an informal con-

ference with the secretary of revenue under K.S.A. 79-3226, and amendments thereto, for a determination of whether such person is a responsible individual under subsection (a), and for a determination of the tax liability of the business.

(d) If a notice of assessment and a warrant are issued to a responsible individual pursuant to a jeopardy provision of chapter 79 of the Kansas Statutes Annotated, the person assessed may request that the informal conference held pursuant to subsection (c) be expedited. When such a request is made, the secretary shall schedule the conference to be held within 21 days after receipt of the request and shall issue a written final determination within 21 days after the close of the conference.

Sec. 8. K.S.A. 2009 Supp. 79-3298 is hereby amended to read as follows: 79-3298. (a) Every employer, payer, person or organization deducting and withholding tax shall remit the taxes and file returns in accordance with the following provisions:

(1) Whenever the total amount withheld exceeds \$100,000 in any calendar year, the employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld in accordance with the following schedule: Each calendar month shall be divided into four remittance periods that end on the 7th, 15th, 21st and the last day of such month. If at the end of any one or all of such remittance periods the total undeposited taxes equal or exceed \$667, the taxes shall be remitted within three banking days. Saturdays, Sundays and legal holidays shall not be treated as banking days.

(2) Whenever the total amount withheld exceeds \$8,000 but does not exceed \$100,000 in any calendar year, the employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld for wages paid during the first 15 days of any month on or before the 25th day of the month. The employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld for wages paid during the remainder of that month on or before the 10th day of the following month.

(3) Whenever the total amount withheld exceeds \$1,200 but does not exceed \$8,000 in any calendar year, the employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld during any month on or before the 15th day of the following month.

(4) Whenever the total amount withheld exceeds \$200 but does not exceed \$1,200 in any calendar year, the employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld in any calendar quarter on or before the 25th day of the first month following the end of that calendar quarter.

(5) Whenever the total amount withheld does not exceed \$200 in any calendar year, the employer, payer, person or organization deducting and withholding tax shall remit the taxes withheld during that year on or before January 25 of the following year.

(b) Each remittance required under the provisions of subsection (a) shall be accompanied by a Kansas withholding tax remittance form *and shall be filed in the manner* prescribed ~~and furnished~~ by the director, *including electronic filing*.

(c) Every employer, payer, person or organization deducting and withholding tax and making remittances pursuant to subsection (a) shall file a return on a form *or in the format and shall file in the manner* prescribed ~~and furnished~~ by the director, *including electronic filing*, for each calendar year on or before the last day of February of the following year.

(d) The excess of any remittance over the actual taxes withheld in any withholding period shall be credited against the liability for following withholding periods until exhausted. A refund shall be allowed in accordance with K.S.A. 79-32,105, and amendments thereto, where an overpayment cannot be adjusted by an offset against the liability for a subsequent withholding period.

(e) For purposes of determining filing requirements, determinations of amounts withheld during a calendar year by employers, payers, persons or organizations deducting and withholding tax shall be made by the director upon the basis of amounts withheld by those employers, payers, persons or organizations during the preceding calendar year or by estimates in cases of employers, payers, persons or organizations having no previous withholding histories. The director is hereby authorized to modify the filing schedule for any employer, payer, person or organization

deducting and withholding tax when it is apparent that the original determination was inaccurate.

(f) Whenever the director has cause to believe that money withheld by an employer, payer, person or organization deducting and withholding tax pursuant to this act may be converted, diverted, lost, or otherwise not timely paid in accordance with this section, the director shall have the power to require returns and payment from any such employer, payer, person or organization at any time at more frequent intervals than prescribed by this section in order to secure full payment to the state of all amounts withheld by such employer, payer, person or organization in accordance with this act.

Sec. 9. K.S.A. 2009 Supp. 79-32,100c is hereby amended to read as follows: 79-32,100c. (a) If an employer, payer, person or organization deducting and withholding tax fails to deduct and withhold the tax as required under this act, and thereafter, the income tax against which the tax may be credited is paid, the tax required to be deducted and withheld shall not be collected from the employer, payer, person or organization. The payment of such tax does not, however, operate to relieve the employer, payer, person or organization from liability for penalties, interest or additions to the tax applicable with respect to such failure to deduct and withhold. The employer, payer, person or organization shall not be relieved under this provision from liability for payment of the tax required to be withheld unless it can be shown that the income tax against which the tax required to be withheld under this act may be credited has been paid.

(b) Every agent or other person having control, receipt, custody or disposal of, or paying the wages of an employee or group of employees employed by one or more employers, is for the purpose of this act designated to be an employer. In the case of the corporation, the officers and board of directors are likewise considered employers. Employers of classes named in this section shall be subject to all the provisions of law including penalties as is their principal. Any employer who willfully fails to collect the tax imposed by the Kansas withholding tax act or truthfully account for any pay over such tax, or willfully attempts in any manner to evade or defeat any tax or the payment thereof, shall be subject to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over in addition to other penalties provided by law. *As used in this section, "willfully" has the same meaning as such term has for federal tax purposes in 26 U.S.C. 6672.*

Sec. 10. K.S.A. 79-32,107 is hereby amended to read as follows: 79-32,107. (a) All penalties and interest prescribed by K.S.A. 79-3228, and amendments thereto, for noncompliance with the income tax laws of Kansas shall be applicable for noncompliance with the provisions of the Kansas withholding and declaration of estimated tax act relating to withholding tax which shall be enforced in the same manner as the Kansas income tax act. A penalty at the same rate per annum prescribed by subsection (b) of K.S.A. 79-2968, and amendments thereto, for interest upon delinquent or unpaid taxes shall be applied and added to a taxpayer's amount of underpayment of estimated tax due from the date the estimated tax payment was due until the same is paid or until the 15th day of the fourth month following the close of the taxable year for which such estimated tax is a credit, whichever date is earlier, but such penalty shall not be added if the total amount thereof does not exceed \$1. For purposes of this subsection, the amount of underpayment of estimated tax shall be the excess of the amount of the installment which would be required to be paid if the estimated tax were equal to 90% of the tax shown on the return for the taxable year or, if no return was filed, 90% of the tax for such year, over the amount, if any, of the installment paid on or before the last date prescribed for payment. Amounts due from any employer on account of withholding or from any taxpayer for estimated tax may be collected by the director in the manner provided for the collection of state income tax in K.S.A. 79-3235, and amendments thereto. For purposes of this subsection, "underpayment of tax" means the difference between the amount of tax actually paid and the amount of tax which would have been required to be paid to avoid penalty pursuant to subsection (b) or (c).

(b) No penalty or interest shall be imposed upon any individual with respect to any underpayment of any installment if the total amount of all payments of estimated tax made on or before the last date prescribed for

the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(1) The tax shown on the return of the individual for the preceding taxable year, if a return showing a liability for tax was filed by the individual for the preceding taxable year;

(2) zero if no return was required to be filed or if the tax liability on the individual's return was less than \$200 for the preceding taxable year;

(3) an amount equal to 66 2/3%, in the case of individuals referred to in subsection (b) of K.S.A. 79-32,102, and amendments thereto, and 90%, in the case of all other individuals, of the tax for the taxable year computed by placing on an annualized basis, pursuant to rules and regulations adopted by the secretary of revenue, the taxable income for the months in the taxable year ending before the month in which the installment is required to be made.

(c) No penalty or interest shall be imposed upon any corporation with respect to any underpayment of any installment of estimated tax if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:

(1) The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year, or zero if no return was required to be filed, or if the tax liability on the corporation's return was less than \$500 for the preceding taxable year; or

(2) (A) an amount equal to 90% of the tax for the taxable year computed by placing on an annualized basis the taxable income: (i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month; (ii) for the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month; (iii) for the first six months or for the first eight months of the taxable year in the case of the installment required to be paid in the ninth month; and (iv) for the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) For purposes of this subsection (2), the taxable income shall be placed on an annualized basis by (i) multiplying by 12 the taxable income referred to in subsection (2)(A), and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or 11, as the case may be) referred to in subsection (2)(A).

(d) If the employer, in violation of the provisions of this act, fails to deduct and withhold under this chapter, and thereafter the tax against which such withholding may be credited is paid, the amount otherwise required to be deducted and withheld shall not be collected from the employer; ~~but~~ This subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

(e) Any person required to collect, truthfully account for, and pay over any tax imposed by this act, who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to the other penalties of this section be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. *As used in this section, "willfully" has the same meaning as such term has for federal tax purposes in 26 U.S.C. 6672.*

(f) In case of failure by any employer required by subsection (b) of K.S.A. 79-3298, and amendments thereto, to remit any amount of withheld taxes by the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 15% of the amount of the underpayment. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be withheld and remitted over the amount, if any, remitted on or before the date prescribed therefor. The failure to remit for any withholding period shall be deemed not to continue beyond the last date prescribed for filing the annual return as required by subsection (d) of K.S.A. 79-3298, and amendments thereto. Penalty and interest as prescribed by K.S.A. 79-3228, and amendments thereto, shall not begin to accrue under subsec-

tion (a) of this section on the amount of any such underpayment until the due date of the annual return for the calendar year in which such failure to remit occurs.

(g) Whenever the secretary or the secretary's designee determines that the failure of the taxpayer to comply with the provisions of subsections (a), (e), or (f) of this section was due to reasonable causes, the secretary or the secretary's designee may waive or reduce any of said penalties and may reduce the interest rate to the underpayment rate prescribed and determined for the applicable period under section 6621 of the federal internal revenue code as in effect on January 1, 1994, upon making a record of the reasons therefor.

Sec. 11. K.S.A. 2009 Supp. 79-3607 is hereby amended to read as follows: 79-3607. (a) Retailers shall make returns to the director at the times prescribed by this section *in the manner prescribed by the director, including electronic filing*, upon forms or format prescribed ~~and furnished~~ by the director stating: (1) The name and address of the retailer; (2) the total amount of gross sales of all tangible personal property and taxable services rendered by the retailer during the period for which the return is made; (3) the total amount received during the period for which the return is made on charge and time sales of tangible personal property made and taxable services rendered prior to the period for which the return is made; (4) deductions allowed by law from such total amount of gross sales and from total amount received during the period for which the return is made on such charge and time sales; (5) receipts during the period for which the return is made from the total amount of sales of tangible personal property and taxable services rendered during such period in the course of such business, after deductions allowed by law have been made; (6) receipts during the period for which the return is made from charge and time sales of tangible personal property made and taxable services rendered prior to such period in the course of such business, after deductions allowed by law have been made; (7) gross receipts during the period for which the return is made from sales of tangible personal property and taxable services rendered in the course of such business upon the basis of which the tax is imposed. The return shall include such other pertinent information as the director may require. In making such return, the retailer shall determine the market value of any consideration, other than money, received in connection with the sale of any tangible personal property in the course of the business and shall include such value in the return. Such value shall be subject to review and revision by the director as hereinafter provided. Refunds made by the retailer during the period for which the return is made on account of tangible personal property returned to the retailer shall be allowed as a deduction under subdivision (4) of this section in case the retailer has theretofore included the receipts from such sale in a return made by such retailer and paid taxes therein imposed by this act. The retailer shall, at the time of making such return, pay to the director the amount of tax herein imposed, except as otherwise provided in this section. The director may extend the time for making returns and paying the tax required by this act for any period not to exceed 60 days under such rules and regulations as the secretary of revenue may prescribe. When the total tax for which any retailer is liable under this act, does not exceed the sum of \$80 in any calendar year, the retailer shall file an annual return on or before January 25 of the following year. When the total tax liability does not exceed \$3,200 in any calendar year, the retailer shall file returns quarterly on or before the 25th day of the month following the end of each calendar quarter. When the total tax liability exceeds \$3,200 in any calendar year, the retailer shall file a return for each month on or before the 25th day of the following month. When the total tax liability exceeds \$32,000 in any calendar year, the retailer shall be required to pay the sales tax liability for the first 15 days of each month to the director on or before the 25th day of that month. Any such payment shall accompany the return filed for the preceding month. A retailer will be considered to have complied with the requirements to pay the first 15 days' liability for any month if, on or before the 25th day of that month, the retailer paid 90% of the liability for that fifteen-day period, or 50% of such retailer's liability in the immediate preceding calendar year for the same month as the month in which the fifteen-day period occurs computed at the rate applicable in the month in which the fifteen-day period occurs, and, in either case, paid any underpayment with the payment required on or before the 25th day

of the following month. Such retailers shall pay their sales tax liabilities for the remainder of each such month at the time of filing the return for such month. Determinations of amounts of liability in a calendar year for purposes of determining filing requirements shall be made by the director upon the basis of amounts of liability by those retailers during the preceding calendar year or by estimates in cases of retailers having no previous sales tax histories. The director is hereby authorized to modify the filing schedule for any retailer when it is apparent that the original determination was inaccurate.

(b) All model 1, model 2 and model 3 sellers are required to file returns electronically. Any model 1, model 2 or model 3 seller may submit its sales and use tax returns in a simplified format approved by the director. Any seller that is registered under the agreement, which does not have a legal requirement to register in this state, and is not a model 1, model 2 or model 3 seller, may submit its sales and use tax returns as follows: (1) Upon registration, the director shall provide to the seller the returns required;

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

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

Sec. 12. K.S.A. 2009 Supp. 79-3609 is hereby amended to read as follows: 79-3609. (a) Every person engaged in the business of selling tangible personal property at retail or furnishing services taxable in this state, shall keep records and books of all such sales, together with invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal. Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption, except as follows: (1) A retailer is relieved of liability for tax otherwise applicable if the retailer obtains a fully completed exemption certificate or captures the relevant data elements required by the director within 90 days subsequent to the date of the sale; or (2) if the retailer has not obtained an exemption certificate or all relevant data elements, the retailer, within 120 days subsequent to a request for substantiation by the director, either may ~~prove that the transaction was not subject to tax by other means~~ or obtain a fully completed exemption certificate from the purchaser, taken in good faith *which meets the requirements specified in this subsection, or obtain other information establishing that the transaction was not subject to tax.* Otherwise, the sales shall be deemed to be taxable sales under this act. *The seller shall obtain an exemption certificate that claims an exemption that was authorized pursuant to Kansas law on the date of the transaction in the jurisdiction where the transaction is sourced pursuant to law, could be applicable to the item being purchased and is reasonable for the purchaser's type of business. If the seller obtains an exemption certificate or other information as described in this subsection, the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction, and it must be established that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.*

(b) The amount of tax imposed by this act is to be assessed within three years after the return is filed, and no proceedings in court for the

collection of such taxes shall be begun after the expiration of such period. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time, within two years from the discovery of such fraud. No assessment shall be made for any period preceding the date of registration of the retailer by more than three years except in cases of fraud. For any refund or credit claim filed after June 15, 2009, no refund or credit shall be allowed by the director after one year from the due date of the return for the reporting period as provided by K.S.A. 79-3607, and amendments thereto, unless before the expiration of such period a claim therefor is filed by the taxpayer, and, except as otherwise provided in K.S.A. 2009 Supp. 79-3694, and amendments thereto, no suit or action to recover on any claim for refund shall be commenced until after the expiration of six months from the date of filing such claim satisfying the requirements specified by K.S.A. 2009 Supp. 79-3693, and amendments thereto, therefor with the director. A refund claim shall not be deemed filed unless such claim is complete as required by K.S.A. 2009 Supp. 79-3693, and amendments thereto. For all mailed returns, including refund claims, each return or refund claim shall be presumed to have been filed with the department on the postmark date of such return or refund claim or if such date is illegible, the date three days prior to the date such return or refund claim is received.

(c) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the period of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

(d) Interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, shall be allowed on any overpayment of tax computed from the filing date of the return claiming the refund, except that no interest shall be allowed on any such refund if the same is paid within 120 days after the filing date of the return claiming the refund or the date of payment, whichever is later, provided that such return or refund claim satisfies the requirements specified by K.S.A. 2009 Supp. 79-3693, and amendments thereto, at the time the return or refund claim is received.

(e) Notwithstanding any other provision of this section or the provisions of the Kansas compensating tax act:

(1) (A) Any claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act which is without dispute shall be allowed, but, with respect to any claim exceeding \$10,000, the refund associated therewith shall not be paid until after 510 days from the date such claim was filed and shall not include interest from such date. As used in this subparagraph, a claim for refund without dispute shall not include any claim the basis for which is a judicial or quasi-judicial interpretation of such subsection occurring after the effective date of this act.

(B) Any refund of tax resulting from a final determination or adjudication with regard to any claim submitted or to be submitted for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the provisions of subsection (kk) of K.S.A. 79-3606 in existence prior to its amendment by this act not described by subparagraph (A) shall, with respect to any refund exceeding \$50,000, be paid in equal annual installments over 10 years commencing with the year of such final determination or adjudication. Interest shall not accrue during the time period of such payment.

(2) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of subsection (n) of K.S.A. 79-3606 pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on August 13, 1999, in the case entitled *In re appeal of Water District No. 1 of Johnson County* shall be allowed for tax paid prior to the effective date of this act. The provisions of this subsection shall not be applicable to Water District No. 1 of Johnson county.

Sec. 13. K.S.A. 2009 Supp. 79-3643 is hereby amended to read as follows: 79-3643. (a) Any individual who is responsible for collection or payment of sales or compensating tax or control, receipt, custody or disposal of funds due and owing under the Kansas retailers' sales and compensating tax acts who willfully fails to collect such tax, or account for and pay over such tax, or attempts in any manner to evade or defeat such tax or the payment thereof shall be personally liable for the total amount of the tax evaded, or not collected, or not accounted for and paid over, together with any interest and penalty imposed thereon. The provisions of this section shall apply regardless of the: (1) Relationship with the retailer held by such individual; (2) form under which the retailer conducts business, whether a sole proprietorship, partnership or corporation; or (3) dissolution of the business. *As used in this section, "willfully" has the same meaning as such term has for federal tax purposes in 26 U.S.C. 6672.*

(b) A notice of assessment issued to a responsible individual shall be considered to be a proceeding for the collection of the tax liability of the business. If the liability of the business is determined in a proceeding that has become final, any notice of assessment against a responsible individual must be issued within three years after the proceeding against the business has become final.

(c) Within 60 days after the mailing of a notice of assessment against a responsible individual, the person assessed may request an informal conference with the secretary of revenue under K.S.A. 79-3226, and amendments thereto, for a determination of whether such person is a responsible individual under subsection (a) and for a determination of the tax liability of the business.

(d) If notice of assessment and warrant are issued to a responsible individual pursuant to K.S.A. 79-3610, and amendments thereto, or any other jeopardy provision of chapter 79 of the Kansas Statutes Annotated, the person assessed may request that the informal conference held pursuant to subsection (c) be expedited. When such a request is made, the secretary shall schedule the conference to be held within 21 days after receipt of the request and shall issue a written final determination within 21 days after the close of the conference.

(e) The provisions of this section shall be deemed to be supplemental to the Kansas retailers' sales and compensating tax acts.

Sec. 14. K.S.A. 2009 Supp. 79-3651 is hereby amended to read as follows: 79-3651. (a) For the purpose of the proper administration of the Kansas retailers' sales tax act and to prevent evasion of the tax imposed thereunder, it shall be presumed that all gross receipts from the sale of tangible personal property or enumerated services are subject to tax until the contrary is established. The burden of proving that a sale is not subject to tax is upon the seller unless the seller takes from the purchaser an exemption certificate to the effect that the property or service purchased is not subject to tax.

(b) An exemption certificate shall relieve the seller from collecting and remitting tax if the seller has obtained the required identifying information as determined by the director, from the purchaser and the reason for claiming the exemption at the time of purchase and has maintained proper records of exempt transactions pursuant to subsection (a) of K.S.A. 79-3609, and amendments thereto and provided them to the director when requested, except that no such relief from liability shall apply to a seller who: Fraudulently fails to collect the tax; solicits purchasers to participate in the unlawful claim of an exemption; accepts an exemption certificate claiming an entity based exemption when the subject of the transaction is actually received by the purchaser at a location operated by the seller and the director provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred. The purchaser improperly claiming an exemption shall remain liable for the nonpayment of tax.

(c) The exemption certificate shall be substantially in such form as the director may prescribe. The seller shall use the standard form for claiming an exemption electronically as adopted by the director. A seller may require a purchaser to provide a copy of the purchaser's sales tax registration certificate with a resale certificate as a condition for honoring the purchaser's resale exemption claim, except that in the case of drop

shipment sales into this state, the third party vendor may claim a resale exemption based on an exemption certificate provided by its customer, re-seller, or any other information acceptable to the secretary available to the third party vendor evidencing qualification for a resale exemption, regardless of whether the customer, re-seller, is registered to collect and remit sales and use tax in this state. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used. A seller is relieved of liability for the tax otherwise applicable if it obtains a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. Such blanket certificate need not be renewed or updated by the seller for exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subsection, a recurring business relationship exists when a period of no more than 12 months elapses between sales transactions.

(d) To lawfully present a resale exemption certificate the purchaser must be engaged in the business of selling property or services of the same kind that is purchased, hold a registration certificate, except as otherwise permitted in subsection (c) for drop shipment sales into this state, and at the time of purchase, either intend to resell the property in the regular course of business or be unable to ascertain whether the property will be resold or used for some other purpose. A resale exemption certificate may be used for resale of services to tangible personal property and not for services to real property.

(e) Any person who issues a resale certificate or other exemption certificate in order to unlawfully avoid payment of tax for business or personal gain shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$1,000 or imprisonment for not more than one year, or by both. In addition, if the director determines that a person issued a resale certificate in order to unlawfully avoid payment of tax for business or personal gain, the director shall increase any penalty that is due from the person under K.S.A. 79-3615, and amendments thereto, by \$250 or 10 times the tax due, whichever is greater, on each transaction where the misuse of a resale certificate occurred.

(f) Exemption certificates issued by an entity claiming a specific exemption under K.S.A. 79-3606, and amendments thereto, based on the status of the entity shall bear the name, address of the entity and identification number issued to the entity pursuant to K.S.A. 2009 Supp. 79-3692, and amendments thereto, ~~and indicate the subsection under which the exemption is being claimed.~~ Such certificate shall be signed by an ~~officer, office manager or other administrator~~ *authorized person* of the nonprofit entity, if in paper form, and contain the tax identification number of the entity. The certificate shall be substantially in such form as the director may prescribe. *A seller may require that payments be made on an exempt entity's check, warrant, voucher or is charged to the entity's account shall relieve the seller from collecting and remitting the tax if it is taken in good faith as a condition for honoring the entity's exemption claim.*

(g) It shall be the duty of every person who purchases tangible personal property or services that are taxable under this act to pay the full amount of tax that is lawfully due to the retailer making the sale. Any person who willfully and intentionally refuses to pay such tax to the retailer shall be guilty of a misdemeanor and upon conviction shall be punished and fined as provided by subsection (g) of K.S.A. 79-3615, and amendments thereto.

Sec. 15. K.S.A. 2009 Supp. 79-3666 is hereby amended to read as follows: 79-3666. State sales tax rate changes must take effect on the first day of a calendar quarter. The secretary shall make a reasonable effort to provide sellers with as much advance notice as practicable of any rate changes, legislative change in the tax base and amendments to sales and use tax rules and regulations. Failure of a seller to receive such notice or failure of the secretary to provide such notice to a seller or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use tax or otherwise comply with any such legislative, rule or regulatory changes. *Whenever there is less than 30 days between the effective date of any amendments to K.S.A. 79-3603 and 79-3703, which make a change in the retailers' sales tax or compensating use tax rate and the date such rate change takes effect as provided by this section, the seller shall be relieved from liability for failing to collect tax at the*

changed rate if:

(a) The seller collected tax at the immediately preceding rate during such time period; and

(b) the seller's failure to collect at the changed rate does not extend beyond 30 days after such effective date.

When the seller fraudulently failed to collect at the new sales tax rate or solicits purchasers based on the immediately preceding effective rate, such relief from liability does not apply to such seller.

Sec. 16. K.S.A. 2009 Supp. 79-3672 is hereby amended to read as follows: 79-3672. (a) (1) Notwithstanding the provisions of K.S.A. 2009 Supp. 79-3670 and amendments thereto, ~~a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.~~

~~(2) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.~~

~~(3) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.~~

~~(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection (a), the seller shall collect the tax according to subsection (a)(5) of K.S.A. 2009 Supp. 79-3670 and amendments thereto. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.~~

~~(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller. the following provisions apply to sales of "advertising and promotional direct mail":~~

(1) A purchaser of "advertising and promotional direct mail" may provide the seller with either:

(A) A direct pay permit;

(B) an exemption certificate, or other statement approved, authorized or accepted by the secretary, claiming "direct mail"; or

(C) information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients.

(2) If the purchaser provides the permit, certificate or statement referred to in subsections (a)(1)(A) or (a)(1)(B), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving "advertising and promotional direct mail" to which the permit, certificate or statement applies. The purchaser shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to the recipients and shall report and pay any applicable tax due.

(3) If the purchaser provides the seller information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of "advertising and promotional direct mail" where the seller has sourced the sale according to the delivery information provided by the purchaser.

(4) If the purchaser does not provide the seller with any of the items listed in subsections (a)(1)(A), (a)(1)(B) or (a)(1)(C), the sale shall be sourced according to subsection (a)(5) of K.S.A. 2009 Supp. 79-3670, and amendments thereto.

(b) Notwithstanding the provisions of K.S.A. 2009 Supp. 79-3670, and amendments thereto, the following provisions apply to sales of "other direct mail":

(1) Except as otherwise provided in this subsection, sales of "other direct mail" are sourced in accordance with subsection (a)(3) of K.S.A. 2009 Supp. 79-3670, and amendments thereto.

(2) A purchaser of "other direct mail" may provide the seller with either:

(A) A direct pay permit; or

(B) an exemption certificate, or other statement approved, authorized or accepted by the secretary, claiming "direct mail."

(3) If the purchaser provides the permit, certificate or statement referred to in subsection (b)(2)(A) or (b)(2)(B), the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving "other direct mail" to which the permit, certificate or statement apply. Notwithstanding subsection (b)(1) the sale shall be sourced to the jurisdictions to which the "other direct mail" is to be delivered to the recipients and the purchaser shall report and pay any applicable tax due.

(c) For purposes of this section:

(1) "Advertising and promotional direct mail" means:

(A) Printed material that meets the definition of "direct mail"; and

(B) the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word "product" means tangible personal property, a product transferred electronically or a service;

(2) "other direct mail" means any direct mail that is not "advertising and promotional direct mail" regardless of whether "advertising and promotional direct mail" is included in the same mailing. The term includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account and payroll advices;

(B) any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and

(C) other non-promotional direct mail delivered to existing or former shareholders, customers, employees or agents including, but not limited to, newsletters and informational pieces.

"Other direct mail" does not include the development of billing information or the provision of any data processing service that is more than incidental.

(d) (1) (A) This section applies to a transaction characterized as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of "direct mail".

(B) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether "advertising and promotional direct mail" is included in the same mailing.

(2) If a transaction is a "bundled transaction" that includes advertising and promotional direct mail, this section shall apply only if the primary purpose of the transaction is the sale of products or services that meet the definition of "advertising and promotional direct mail."

(3) Nothing in this section shall limit any purchaser's:

(A) Obligation for sales or use tax to any state to which the direct mail is delivered;

(B) right, if any, to a credit for sales or use taxes legally due and paid to other jurisdictions; or

(C) right, if any, to a refund of sales or use taxes overpaid to any jurisdiction.

(4) This section applies for purposes of uniformly sourcing direct mail transactions.

New Sec. 17. For any tax established pursuant to law which is administered by the Kansas department of revenue, any taxpayer having a delinquent tax liability and entering into an agreement with the department providing for an installment payment plan allowing the pay off of such liability in a time period in excess of 90 days from the date when such agreement is entered into shall be assessed a service fee of \$10. The secretary of revenue shall remit all moneys received by or for the secretary from such fees and collected under this section 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 recovery fund for enforcement actions and attorney fees. The secretary of revenue shall remit the first \$350,000 of delinquent taxes, including penalties

and interest, collected during any fiscal year for income tax or any other tax that would otherwise be deposited 100% in the state general fund, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the recovery fund for enforcement actions and attorney fees. All expenditures from the recovery fund for enforcement actions and attorney fees shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of revenue or by a person or persons designated by the secretary.

Sec. 18. K.S.A. 12-1,104 and 79-32,107 and K.S.A. 2009 Supp. 74-50,154, 74-8133, 74-99c09, 79-2971, 79-3298, 79-32,100c, 79-32,211, 79-32,264, 79-3607, 79-3609, 79-3643, 79-3651, 79-3666 and 79-3672 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 19, 2010.

Published in the *Kansas Register* April 29, 2010.
