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HOUSE BILL No. 2747

By Committee on Taxation

2-14

Proposed Committee Amendments to
 HB No. 2747
 Prepared by Gordon Self
 First Assistant Revisor
 Office of Revisor of Statutes
 February 20, 2012

1 AN ACT concerning taxation; relating to income and privilege tax rates;
 2 income tax deductions and credits and income determination;
 3 distribution of sales and use tax revenue; severance tax, exemptions;
 4 rural opportunity zones; amending K.S.A. 79-32,128 and K.S.A. 2011
 5 Supp. 74-50,222, 79-1107, 79-1108, 79-32,110, 79-32,111, 79-32,117,
 6 79-32,119, 79-32,205, 79-3620, 79-3710 and 79-4217 and repealing the
 7 existing sections.

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

and 79-32,176
 40-2246
 79-32,143, 79-32,197,
 79-32,210, 79-32,211a,
 79-3635,

10 New Section 1. (a) (1) Except as provided in subsection (a)(2),
 11 commencing with fiscal year 2012, in any fiscal year in which the amount
 12 of selected actual state general fund receipts from such fiscal year exceeds
 13 the selected actual state general fund receipts for the immediately
 14 preceding fiscal year by more than 2%, the director of legislative research
 15 shall certify such excess amount to the secretary of revenue and the
 16 director of the budget. Upon receipt of such certified amount, the secretary
 17 shall compute the excess percentage increase in selected actual state
 18 general fund receipts above 2%. Based on such excess percentage of
 19 calculated receipt growth, the secretary shall compute the income tax rate
 20 reductions to go into effect for the next tax year that would reduce by such
 21 certified amount the tax rates during the fiscal year after the next fiscal
 22 year according to the provisions of this section, as follows: (A) Rate
 23 reductions for individual income tax rates shall be applied to reduce the
 24 middle marginal income tax rate applicable to the current tax year by such
 25 excess percentage, the highest marginal income tax rate applicable to the
 26 current tax year, by such excess percentage minus 0.5%, and the lowest
 27 marginal income tax rate applicable to the current tax year by such excess
 28 percentage plus 0.5%. In any such computation by the secretary pursuant
 29 to this subsection in which the income tax rate for any individual marginal
 30 income tax rate is below 0.4%, such rate shall be 0%. Based on all such
 31 determinations, the secretary shall reduce individual income tax rates
 32 prescribed by K.S.A. 79-32,110, and amendments thereto, as required by
 33 this section;
 34 (B) upon all individual marginal income tax rates being reduced to
 35 0% pursuant to the provisions of subsection (a)(1)(A), rate reduction next
 36 shall be applied for the surtax on corporations applicable to the current tax

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(b) ~~or she~~ report and compute ~~his or her~~ such individual's Kansas tax as if the ~~or she~~ were such individual was a nonresident for the entire year, except, however, that for purposes of this computation the following modifications shall be made: ~~(i)(1)~~ Modified Kansas source income for that period during which such individual was a resident shall include all items of income, gain, loss or deductions as set forth in K.S.A. 79-32.117, and ~~amendments thereto~~, whether or not derived from sources within Kansas; and ~~(ii)(2)~~ the credit provided by K.S.A. 79-32.111, and ~~amendments thereto~~, shall be allowed. For purposes of computing such credit, the amount of income taxes paid to another state shall be deemed to be limited by an amount which bears the same proportion to the total taxes paid to such other state for such year as the amount of Kansas adjusted gross income derived from sources within that state while such individual was a resident bears to the total Kansas adjusted gross income derived from sources within such state for such year.

Sec. 10. K.S.A. 2011 Supp. 79-32.205 is hereby amended to read as follows: 79-32.205. (a) There shall be allowed as a credit against the tax liability of a resident individual imposed under the Kansas income tax act an amount equal to 18% for tax years 2010 through 2012, and an amount equal to 17% for tax year 2013, and an amount equal to 9% for tax year 2014, and all tax years thereafter, of the amount of the earned income credit allowed against such taxpayer's federal income tax liability pursuant to section 32 of the federal internal revenue code for the taxable year in which such credit was claimed against the taxpayer's federal income tax liability.

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

Sec. 11. K.S.A. 2011 Supp. 79-3620 is hereby amended to read as follows: 79-3620. (a) All revenue collected or received by the director of taxation from the taxes imposed by this act shall be remitted 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, less amounts withheld as provided in subsection (b) and amounts credited as provided in subsection (c), (d) and (e), to the credit of the state general fund.

(b) A refund fund, designated as "sales tax refund fund" not to exceed \$100,000 shall be set apart and maintained by the director from sales tax collections and estimated tax collections and held by the state treasurer for prompt payment of all sales tax refunds including refunds authorized under the provisions of K.S.A. 79-3635, and amendments thereto. Such fund shall be in such amount, within the limit set by this section, as the director shall determine is necessary to meet current refunding

Commencing in tax year 2012, and all tax years thereafter, shall not exceed

reduced by the sum of any other credits allowable against the income tax liability of the taxpayer pursuant to law

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1 from a qualified production enhancement project and certification of the
 2 base production for the enhanced wells or group of wells, and the rate of
 3 decline to be applied to that base production. The secretary of revenue
 4 shall provide credit for any taxes paid between the project startup date and
 5 the certification of qualifications by the commission.

6 (D) The exemptions provided for in this paragraph (6) shall not apply
 7 for 12 months beginning July 1 of the year subsequent to any calendar year
 8 during which: (1) In the case of oil, the secretary of revenue determines
 9 that the weighted average price of Kansas oil at the wellhead has exceeded
 10 \$20.00 per barrel; or (2) in the case of natural gas the secretary of revenue
 11 determines that the weighted average price of Kansas gas at the wellhead
 12 has exceeded \$2.50 per Mcf.

13 (E) The provisions of this paragraph (6) shall not affect any other
 14 exemption allowable pursuant to this section; and

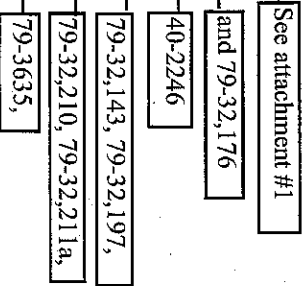
15 (7) for the calendar year 1988, and any year thereafter, the severance
 16 or production of the first 350,000 tons of coal from any mine as certified
 17 by the state geological survey.

18 (c) No exemption shall be granted pursuant to subsection (b)(3) or (4)
 19 to any person who does not have a valid operator's license issued by the
 20 state corporation commission, and no refund of tax shall be made to any
 21 taxpayer attributable to any production in a period when such taxpayer did
 22 not hold a valid operator's license issued by the state corporation
 23 commission.

24 (d) On April 15, 1988, and on April 15 of each year thereafter, the
 25 secretary of revenue shall determine from statistics compiled and provided
 26 by the United States department of energy, the average price per barrel
 27 paid by the first purchaser of crude oil in this state for the six-month
 28 period ending on December 31 of the preceding year. Such price shall be
 29 used for the purpose of determining exemptions allowed by subsection (b)
 30 (2)(B) or (E) for the twelve-month period commencing on May 1 of such
 31 year and ending on April 30 of the next succeeding year.

32 [Sec. 14. K.S.A. 79-32,128 and K.S.A. 2011 Supp. 74-50,222, 79-
 33 1107, 79-1108, 79-32,110, 79-32,111, 79-32,117, 79-32,119, 79-32,205,
 34 79-3620, 79-3710 and 79-4217 are hereby repealed.]

35 Sec. 15. This act shall take effect and be in force from and after its
 36 publication in the statute book.
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Sec _____ K.S.A. 2011 Supp. 40-2246 is hereby amended to read as follows:

40-2246. (a) A credit against the taxes otherwise due under the Kansas income tax act shall be allowed to an employer for amounts paid during the taxable year for purposes of this act on behalf of an eligible employee as defined in K.S.A. 40-2239, and amendments thereto, to provide health insurance or care and amounts contributed to health savings accounts of eligible covered employees.

(b) (1) For employers that have established a small employer health benefit plan after December 31, 1999, but prior to January 1, 2005, the amount of the credit allowed by subsection (a) shall be \$35 per month per eligible covered employee or 50% of the total amount paid by the employer during the taxable year, whichever is less, for the first two years of participation. In the third year, the credit shall be equal to 75% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fourth year, the credit shall be equal to 50% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. In the fifth year, the credit shall be equal to 25% of the lesser of \$35 per month per employee or 50% of the total amount paid by the employer during the taxable year. For the sixth and subsequent years, no credit shall be allowed.

(2) For employers that have established a small employer health benefit plan or made contributions to a health savings account of an eligible covered employee after December 31, 2004, the amount of credit allowed by subsection (a) shall be \$70 per month per eligible covered employee for the first 12 months of participation, \$50 per month per eligible covered employee for the next 12 months of participation and \$35 per eligible covered employee for the next 12 months of participation. After 36 months of participation, no credit shall be allowed.

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(c) If the credit allowed by this section is claimed, the amount of any deduction allowable under the Kansas income tax act for expenses described in this section shall be reduced by the dollar amount of the credit. The election to claim the credit shall be made at the time of filing the tax return in accordance with law. *If Commencing in tax year 2012, and all tax years thereafter, the credit allowed by this section exceeds shall not exceed the taxes imposed under the Kansas income tax act for the taxable year, that portion of the credit which exceeds these taxes shall be refunded to the taxpayer reduced by the sum of any other credits allowable against the tax liability of the taxpayer pursuant to law.*

(d) Any amount of expenses paid by an employer under this act shall not be included as income to the employee for purposes of the Kansas income tax act. If such expenses have been included in federal taxable income of the employee, the amount included shall be subtracted in arriving at state taxable income under the Kansas income tax act.

(e) The secretary of revenue shall promulgate rules and regulations to carry out the provisions of this section.

(f) This section shall apply to all taxable years commencing after December 31, 1999.

Sec. _____ **K.S.A. 2011 Supp. 79-32,143 is hereby amended to read as**

follows: 79-32,143. (a) For net operating losses incurred in taxable years beginning after December 31, 1987, a net operating loss deduction shall be allowed in the same manner that it is allowed under the federal internal revenue code except that such net operating loss may only be carried forward to each of the 10 taxable years following

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the taxable year of the net operating loss. For net operating farm losses, as defined by subsection (f) of section 172 of the federal internal revenue code, incurred in taxable years beginning after December 31, 1999, a net operating loss deduction shall be allowed in the same manner that it is allowed under the federal internal revenue code except that such net operating loss may be carried forward to each of the 10 taxable years following the taxable year of the net operating loss. The amount of the net operating loss that may be carried back or forward for Kansas income tax purposes shall be that portion of the federal net operating loss allocated to Kansas under this act in the taxable year that the net operating loss is sustained.

(b) The amount of the loss to be carried back or forward will be the federal net operating loss after: (1) All modifications required under this act applicable to the net loss in the year the loss was incurred; and (2) after apportionment as to source in the case of corporations, nonresident individuals for losses incurred in taxable years beginning prior to January 1, 1978, and nonresident estates and trusts in the same manner that income for such corporations, nonresident individuals, estates and trusts is required to be apportioned.

(c) If a net operating loss was incurred in a taxable year beginning prior to January 1, 1988, the amount of the net operating loss that may be carried back and carried forward and the period for which it may be carried back and carried forward shall be determined under the provisions of the Kansas income tax laws which were in effect during the year that such net operating loss was incurred.

(d) If any portion of a net operating loss described in subsections (a) and (b) is not utilized prior to the final year of the carryforward period provided in subsection (a), a refund shall be allowable in such final year in an amount equal to the refund which

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would have been allowable in the taxable year the loss was incurred by utilizing the three year carryback provided under K.S.A. 79-32,143, as in effect on December 31, 1987, multiplied by a fraction, the numerator of which is the unused portion of such net operating loss in the final year, and the denominator of which is the amount of such net operating loss which could have been carried back to the three years immediately preceding the year in which the loss was incurred. In no event may such fraction exceed 1.

(e) Notwithstanding any other provisions of the Kansas income tax act, the net operating loss as computed under subsections (a), (b) and (c) of this section shall be allowed in full in determining Kansas taxable income or at the option of the taxpayer allowed in full in determining Kansas adjusted gross income.

(f) *Commencing in tax year 2012, and all tax years thereafter, no refund of income tax which results from a net operating farm loss carry back shall be allowed in an amount exceeding \$1,500 in any year. Any overpayment in excess of \$1,500 may be carried forward to any year or years after the year of the loss and may be claimed as a credit against the tax. The refundable portion of such credit shall not exceed \$1,500 in any year.*

Sec. _____ **K.S.A. 79-32,176 is hereby amended to read as follows: 79-32,176.**

(a) Any resident individual taxpayer who makes expenditures for the purpose of making all or any portion of an existing facility accessible to individuals with a disability, which facility is used as, or in connection with, such taxpayer's principal dwelling or the principal dwelling of a lineal ascendant or descendant, including construction of a small barrier free living unit attached to such principal dwelling, shall

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be entitled to claim a tax credit in an amount equal to the applicable percentage of such expenditures or \$9,000, whichever is less, against the income tax liability imposed against such taxpayer pursuant to article 32 of chapter 79 of the Kansas Statutes Annotated, *and amendments thereto*. Nothing in this subsection shall be deemed to prevent any such taxpayer from claiming such credit: (1) For each principal dwelling in which the taxpayer or lineal ascendant or descendant may reside, or facility used in connection therewith; or (2) more than once, but not more often than once every four-year period of time. The applicable percentage of such expenditures eligible for credit shall be as set forth in the following schedule:

Taxpayers	expenditures	% of
Kansas Adjusted	eligible for	
Gross Income	credit	
\$0 to \$25,000		100%
Over \$25,000 but not over \$30,000		90%
Over \$30,000 but not over \$35,000		80%
Over \$35,000 but not over \$40,000		70%
Over \$40,000 but not over \$45,000		60%
Over \$45,000 but not over \$55,000		50%
Over \$55,000		0

Such tax credit shall be deducted from the taxpayer's income tax liability for the taxable year in which the expenditures are made by the taxpayer. If the amount of such tax credit exceeds the taxpayer's income tax liability for such taxable year, the amount thereof which exceeds such tax liability may be carried over for deduction from the

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taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability, except that no such tax credit shall be carried over for deduction after the fourth taxable year succeeding the taxable year in which the expenditures are made.

(b) Notwithstanding the provisions of subsection (a), if the amount of the taxpayer's tax liability is less than \$2,250 in the first year in which the credit is claimed under this section, an amount equal to the amount by which $\frac{1}{4}$ of the credit allowable under this section exceeds such tax liability shall be refunded to the taxpayer and the amount by which such credit exceeds such tax liability less the amount of such refund may be carried over for the next three succeeding taxable years. If the amount of the taxpayer's tax liability is less than \$2,250 in the second year in which the credit is claimed under this section, an amount equal to the amount by which $\frac{1}{3}$ of the amount of the credit carried over from the first taxable year exceeds such tax liability shall be refunded to the taxpayer and the amount by which the amount of the credit carried over from the first taxable year exceeds such tax liability less the amount of such refund may be carried over for the next two succeeding taxable years. If the amount of the taxpayer's tax liability is less than \$2,250 in the third year in which the credit is claimed under this section, an amount equal to the amount by which $\frac{1}{2}$ of the amount carried over from the second taxable year exceeds such tax liability shall be refunded to the taxpayer and the amount by which the amount of the credit carried over from the second taxable year exceeds such tax liability less the amount of such refund may be carried over to the next succeeding taxable year. If the amount of the credit carried over from the third taxable year exceeds the taxpayer's income tax liability for such year, the amount thereof which exceeds such tax liability shall be refunded to the taxpayer. The

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provisions of this section shall apply to tax year 2012, and all tax years thereafter.

Sec. _____ **K.S.A. 79-32,197 is hereby amended to read as follows: 79-632,197** The amount of credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto, shall not exceed 50% of the total amount contributed during the taxable year by the business firm to a community service organization or governmental entity for programs approved pursuant to K.S.A. 79-32,198, and amendments thereto. The amount of credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto, shall not exceed 70% of the total amount contributed during the taxable year by the business firm in a rural community to a community service organization or governmental entity located therein for programs approved pursuant to K.S.A. 79-32,198, and amendments thereto. ~~If Commencing in tax year 2012, and all tax years thereafter,~~ the amount of the credit allowed by K.S.A. 79-32,196, and amendments thereto, ~~exceeds shall not exceed~~ the taxpayer's income tax liability imposed under the Kansas income tax act, ~~such excess amount shall be refunded to the taxpayer reduced by the sum of any other credits allowable against the tax liability of the taxpayer pursuant to law.~~ In no event shall the total amount of credits allowed under this section exceed \$4,130,000 for any one fiscal year.

Sec. _____ **K.S.A. 79-32,210 is hereby amended to read as follows: 79-32,210**

(a) For all taxable years commencing after December 31, 2000, and with respect to property initially acquired and first placed into service in this state on and after January 1, 2001, there shall be allowed as a credit against the tax liability imposed by the Kansas income tax act of a telecommunications company, as defined in K.S.A. 79-

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3271 and amendments thereto, an amount equal to the difference between the property tax levied for property tax year 2001, and all such years thereafter, and actually and timely paid during the appropriate income taxable year upon property assessed at the 33% assessment rate and the property tax which would be levied and paid on such property if assessed at a 25% assessment rate.

(b) *If Commencing in tax 2012, and all tax years thereafter, the amount of the tax credit determined under subsection (a) exceeds shall not exceed the tax liability for the telecommunications company for any taxable year, the amount thereof which exceeds such tax liability shall be refunded to the telecommunications company reduced by the sum of any other credits allowable against the tax liability of the taxpayer pursuant to law. If the telecommunications company 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 income or loss of the corporation, partnership or limited liability company.*

(c) As used in this section, the term "acquired" shall not include the transfer of property pursuant to an exchange for stock securities, or the transfer of assets of one business entity to another due to a merger or other consolidation.

Sec. _____ **K.S.A. 79-32,211a is hereby amended to read as follows:**

79-32,211a. (a) For taxable years commencing after December 31, 2006, subject to the provisions of subsection (d), any taxpayer which contributes, gifts or donates to a state-owned historic site or an organization which is exempt from federal income taxation

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pursuant to section 501(c)(3) of the federal internal revenue code of 1986, which such organization owns and operates an historic site, to be used for the purpose of restoration, preservation or operation of such state-owned historic site or historic site or the establishment or maintenance of an endowment to provide for the future stability of such state-owned historic site or historic site shall be allowed a credit against the tax imposed by the Kansas income tax act, the premiums tax upon insurance companies imposed pursuant to K.S.A. 40-252, and amendments thereto, and 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, *and amendments thereto*, in an amount equal to 50% of such contribution, gift or donation, if the total amount of such contribution, gift or donation is at least \$1,000. The amount of the credit shall not exceed \$2,500 for any one taxpayer in any one taxable year. In no event shall the total amount of credits allowed under this section exceed \$200,000 in any one fiscal year.

(b) The credit allowed by this section shall be deducted from the taxpayer's income, premiums or privilege tax liability imposed for the taxable year in which the contribution, gift or donation is made.

(c) *If For tax year 2012*, the amount of the credit allowed by this section exceeds *shall not exceed* the taxpayer's income tax liability imposed under the Kansas income tax act, ~~such excess amount shall be refunded to the taxpayer reduced by the sum of any other credits allowable against the tax liability of the taxpayer pursuant to law.~~

(d) The partnership historic site committee created pursuant to K.S.A. 2011 Supp. 75-2732, and amendments thereto, shall develop a prioritized list of historic sites other than state-owned historic sites to which contributions, gifts or donations to

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organizations which own and operate an historic site qualify for the tax credit provided in this section. As used in this section: (1) "Contributions, gifts or donations" includes monetary contributions, gifts or donations and in kind contributions, gifts or donations that have an established market value;

(2) "historic site" means any building or structure that is significant in the history, architecture, archeology or culture of the state of Kansas or Kansas communities or the nation. Such historic site must be listed on the national register of historic places or the register of historic Kansas places, be open to the public or have the potential to be open to the public for at least 500 hours a year and be owned and operated for the purpose of educating the public about a specific aspect of Kansas and United States history; and

(3) "state-owned historic site" means an historic site under the jurisdiction and control of the state historical society;

(e) Any contribution, gift or donation that is the basis of the credit provided in this section shall not qualify as a qualified expenditure for the purpose of qualifying for the credit provided in K.S.A. 79-32,211, and amendments thereto.

(f) The provisions of this section shall expire on June 30, 2012.

Sec. _____ K.S.A. 79-3635 is hereby amended to read as follows: 79-3635. (a)

~~(1) A claimant shall be entitled to a refund of retailers' sales taxes paid upon food during the calendar year 2010 and each year thereafter in the amount hereinafter provided. There shall be allowed for each member of a household of a claimant having income of \$17,500 or less, an amount equal to \$90. There shall be allowed for each member of a household of a claimant having income of more than \$17,500 but not more than \$35,000, an amount equal to \$45. There shall be allowed for a claimant who qualifies for an additional personal exemption amount pursuant to K.S.A. 79-32,121,~~

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and amendments thereto, an additional amount of \$45 or \$90, as the case requires. All such claims shall be paid from the sales tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director of taxation or by a person or persons designated by the director.

(2) As an alternative to the procedure described by subsection (a)(1), for all taxable years commencing after December 31, 2009, there shall be allowed as a credit against the tax liability of a resident individual imposed under the Kansas income tax act an amount equal to \$45 or \$90, as the case requires, for each member of a household. There shall be allowed for a claimant who qualifies for an additional personal exemption amount pursuant to K.S.A. 79-32,121, and amendments thereto, an additional amount of \$45 or \$90, as the case requires. ~~If Commencing in tax year 2012, and all tax years thereafter, the amount of such tax credit exceeds shall not exceed the claimant's income tax liability for such taxable year, such excess amount shall be refunded to the claimant reduced by the sum of any other credits allowable against the tax liability of the taxpayer pursuant to law.~~

(b) A head of household shall make application for refunds for all members of the same household upon a common form provided for the making of joint claims. All claims paid to members of the same household shall be paid as a joint claim by means of a single warrant.

(c) No claim for a refund of taxes under the provisions of K.S.A. 79-3632 *et seq.*, and amendments thereto, shall be paid or allowed unless such claim is actually filed with and in the possession of the department of revenue on or before April 15 of the year next succeeding the year in which such taxes were paid. The director of taxation may: (1) Extend the time for filing any claim under the provisions of this act when

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good cause exists therefor; or (2) accept a claim filed after the deadline for filing in the case of sickness, absence or disability of the claimant if such claim has been filed within four years of such deadline.

(d) In the case of all tax years commencing after December 31, 2010, the threshold income amounts prescribed in this section and subsection (c) of K.S.A. 79-3633, and amendments thereto, and the amounts of refund of taxes and the amounts of the tax credit, both as prescribed in this section, shall be increased by an amount equal to such threshold amount multiplied by the cost-of-living adjustment determined under section 1 (f)(3) of the federal internal revenue code for the calendar year in which the taxable year commences.

