

SENATE BILL No. 177

By Committee on Utilities

2-10

1 AN ACT concerning taxation; relating to periods of limitation for certain
2 refunds and credits; amending K.S.A. 2010 Supp. 79-3609 and
3 repealing the existing section.
4

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

6 Section 1. K.S.A. 2010 Supp. 79-3609 is hereby amended to read as
7 follows: 79-3609. (a) Every person engaged in the business of selling
8 tangible personal property at retail or furnishing services taxable in this
9 state, shall keep records and books of all such sales, together with
10 invoices, bills of lading, sales records, copies of bills of sale and other
11 pertinent papers and documents. Such books and records and other papers
12 and documents shall, at all times during business hours of the day, be
13 available for and subject to inspection by the director, or the director's
14 duly authorized agents and employees, for a period of three years from
15 the last day of the calendar year or of the fiscal year of the retailer,
16 whichever comes later, to which the records pertain. Such records shall be
17 preserved during the entire period during which they are subject to
18 inspection by the director, unless the director in writing previously
19 authorizes their disposal. Any person selling tangible personal property or
20 furnishing taxable services shall be prohibited from asserting that any
21 sales are exempt from taxation unless the retailer has in the retailer's
22 possession a properly executed exemption certificate provided by the
23 consumer claiming the exemption, except as follows: (1) A retailer is
24 relieved of liability for tax otherwise applicable if the retailer obtains a
25 fully completed exemption certificate or captures the relevant data
26 elements required by the director within 90 days subsequent to the date of
27 the sale; or (2) if the retailer has not obtained an exemption certificate or
28 all relevant data elements, the retailer, within 120 days subsequent to a
29 request for substantiation by the director, either may obtain a fully
30 completed exemption certificate from the purchaser, taken in good faith
31 which meets the requirements specified in this subsection, or obtain other
32 information establishing that the transaction was not subject to tax.
33 Otherwise, the sales shall be deemed to be taxable sales under this act.
34 The seller shall obtain an exemption certificate that claims an exemption
35 that was authorized pursuant to Kansas law on the date of the transaction
36 in the jurisdiction where the transaction is sourced pursuant to law, could

1 be applicable to the item being purchased and is reasonable for the
2 purchaser's type of business. If the seller obtains an exemption certificate
3 or other information as described in this subsection, the seller is relieved
4 of any liability for the tax on the transaction unless it is discovered
5 through the audit process that the seller had knowledge or had reason to
6 know at the time such information was provided that the information
7 relating to the exemption claimed was materially false or the seller
8 otherwise knowingly participated in activity intended to purposefully
9 evade the tax that is properly due on the transaction, and it must be
10 established that the seller had knowledge or had reason to know at the
11 time the information was provided that the information was materially
12 false.

13 (b) The amount of tax imposed by this act is to be assessed within
14 three years after the return is filed, and no proceedings in court for the
15 collection of such taxes shall ~~be begun~~begin after the expiration of such
16 period. In the case of a false or fraudulent return with intent to evade tax,
17 the tax may be assessed or a proceeding in court for collection of such tax
18 may ~~be begun~~begin at any time, within two years from the discovery of
19 such fraud. No assessment shall be made for any period preceding the
20 date of registration of the retailer by more than three years except in cases
21 of fraud. For any refund or credit claim filed after ~~June 15, 2009~~July 1,
22 2011, no refund or credit shall be allowed by the director after ~~one~~
23 ~~year~~three years from the due date of the return for the reporting period as
24 provided by K.S.A. 79-3607, and amendments thereto, unless before the
25 expiration of such period a claim therefor is filed by the taxpayer, and,
26 except as otherwise provided in K.S.A. 2010 Supp. 79-3694, and
27 amendments thereto, no suit or action to recover on any claim for refund
28 shall be commenced, until after the expiration of six months from the date
29 of filing such claim satisfying the requirements specified by K.S.A. 2010
30 Supp. 79-3693, and amendments thereto, therefor with the director. A
31 refund claim shall not be deemed filed unless such claim is complete as
32 required by K.S.A. 2010 Supp. 79-3693, and amendments thereto. For all
33 mailed returns, including refund claims, each return or refund claim shall
34 be presumed to have been filed with the department on the postmark date
35 of such return or refund claim or if such date is illegible, the date three
36 days prior to the date such return or refund claim is received.

37 (c) Before the expiration of time prescribed in this section for the
38 assessment of additional tax or the filing of a claim for refund, the
39 director is hereby authorized to enter into an agreement in writing with
40 the taxpayer consenting to the extension of the periods of limitations for
41 the assessment of tax or for the filing of a claim for refund, at any time
42 prior to the expiration of the period of limitations. The period so agreed
43 upon may be extended by subsequent agreements in writing made before

1 the expiration of the period previously agreed upon. In consideration of
2 such agreement or agreements, interest due in excess of 48 months on any
3 additional tax shall be waived.

4 (d) Interest at the rate prescribed by K.S.A. 79-2968, and
5 amendments thereto, shall be allowed on any overpayment of tax
6 computed from the filing date of the return claiming the refund, except
7 that no interest shall be allowed on any such refund if the same is paid
8 within 120 days after the filing date of the return claiming the refund or
9 the date of payment, whichever is later, provided that such return or
10 refund claim satisfies the requirements specified by K.S.A. 2010 Supp.
11 79-3693, and amendments thereto, at the time the return or refund claim
12 is received.

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

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

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

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

43 Sec. 2. K.S.A. 2010 Supp. 79-3609 is hereby repealed.

1 Sec. 3. This act shall take effect and be in force from and after its
2 publication in the statute book.
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