

HOUSE BILL No. 2401

By Committee on Taxation

3-5

1 AN ACT concerning taxation; relating to excise taxes, ethanol production,
2 electricity generated from renewable resources.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in sections 1 through 7, and amendments thereto:

6 (a) "Director" means the director of taxation;

7 (b) "person" means any natural person, firm, copartnership, joint
8 venture, association, corporation, estate, trust, or any other group or
9 combination acting as a unit, and the plural as well as the singular number;

10 (c) "producer" means any person that produces electricity from
11 renewable resources. The term "producer" does not include any person
12 who produces electricity from renewable resources for personal
13 consumption so long as that person does not sell or transfer more than 500
14 kilowatt hours of excess production in any 24-hour period during any
15 calendar year; and

16 (d) "renewable resources" means wind, biomass, solar, hydro or
17 geothermal sources.

18 Sec. 2. (a) There is hereby imposed an excise tax of 4.33% of the
19 gross value of the electricity produced from renewable resources in this
20 state. The tax shall be imposed upon the production of any electricity
21 produced from renewable resources for sale or trade on or after January 1,
22 2016, and shall be paid by the person producing such electricity. The tax
23 shall be imposed on each megawatt hour of electricity produced from
24 renewable resources at the point of interconnection with an electric
25 transmission line.

26 (b) There is hereby imposed an excise tax upon the production of
27 ethanol in this state for sale. The tax shall be paid by the person producing
28 such ethanol. The rate of such tax shall be 4.33% of the gross value of
29 each gallon of ethanol subject to tax under this act.

30 Sec. 3. No tax shall be imposed upon electricity which is produced
31 from any generating facility owned or operated by the federal government,
32 state of Kansas or by any county or municipality in this state. No tax shall
33 be imposed upon electricity which is produced for the personal
34 consumption of the producer, including any excess production of
35 electricity that does not exceed 500 kilowatt hours in any 24-hour period.

36 Sec. 4. (a) On or before February 1 of each year, any person

1 producing ethanol or electricity from renewable resources within this state
2 which is subject to the tax imposed by section 2, and amendments thereto,
3 shall file with the director at the director's office in Topeka, Kansas, upon a
4 form prescribed, prepared and furnished by the director a report certifying
5 the number of gallons of ethanol or the gross value of electricity produced
6 in this state during the preceding calendar year, as the case may be.

7 (b) At the time the report is filed, every person producing ethanol or
8 electricity from renewable resources in this state shall compute and pay to
9 the director at the director's office the amount of taxes due to the state
10 based on the aggregate number of gallons of ethanol produced or the gross
11 value of electricity generated by renewable energy, during the preceding
12 calendar year, as the case may be.

13 (c) All taxes imposed under the provisions of this act not paid on or
14 before February 1 of the year succeeding the calendar year in which the
15 taxable ethanol was produced or electricity was generated shall be deemed
16 delinquent and shall bear interest at the rate per month, or fraction thereof,
17 prescribed by K.S.A. 79-2968(a), and amendments thereto, from such due
18 date until paid. In addition, there is hereby imposed upon all amounts of
19 such taxes remaining due and unpaid after such due date a penalty in the
20 amount of 5%. The penalty shall be added to and collected by the director
21 as part of the taxes.

22 (d) If any person fails to make or file a return and remit the tax as
23 required by subsection (a), the director shall impose a penalty of 5% for
24 each 30-day period, or fraction thereof, elapsing between the due date of
25 the return and the date filed, unless the person for good cause obtains from
26 the director an extension of time for filing prior to the due date for filing.
27 In the event of an extension, the person shall pay interest due on
28 delinquent payments set forth in subsection (c). In no event shall the total
29 penalty imposed by this subsection exceed 25% of the tax due. If the
30 person furnishes evidence to the director that the delinquency was due to
31 causes beyond the person's reasonable control, and if in the opinion of the
32 director the delinquency was not the result of willful negligence of the
33 person, the penalty or interest, or both, may be waived or reduced by the
34 director.

35 (e) If any person files a false or fraudulent return or fails to file a
36 return with intent to evade the tax imposed by this act, there shall be added
37 to the amount of the deficiency determined by the director a penalty equal
38 to 100% of the deficiency together with the interest at the rate per month
39 or fraction thereof, prescribed by K.S.A. 79-2968(a), and amendments
40 thereto, on such deficiency from the date such tax was due to the date of
41 payment, in addition to all other penalties prescribed by law.

42 Sec. 5. (a) The director, or any deputy or agent appointed in writing
43 by the director, shall examine returns and shall determine the correct

1 amount of tax. If the amount of tax found due is greater than the amount
2 paid, or if a claim for a refund is denied, notice shall be mailed to the
3 producer. Within 60 days after the mailing of such notice, the producer
4 may request an informal conference with the secretary of revenue or the
5 secretary's designee. Based on the evidence presented at such informal
6 conference, the secretary of revenue or the secretary's designee shall make
7 a final determination within the period prescribed by K.S.A. 79-3226, and
8 amendments thereto, and shall notify the producer of such decision and, if
9 additional amounts are found to be due, such decision shall be
10 accompanied by a notice and demand for payment. Notice under this
11 section shall be sent by first class mail.

12 (b) The tax shall be paid within 20 days thereafter, together with
13 interest at the rate per month prescribed by K.S.A. 79-2968(a), and
14 amendments thereto, on the additional tax from the date the tax was due,
15 unless an appeal is taken in the manner provided by law, but no additional
16 tax shall be assessed for less than \$5. Interest at such rate shall continue to
17 accrue on any additional tax liability during the course of any appeal.

18 Sec. 6. Each producer shall maintain and keep, for a period of three
19 years, the necessary instruments, records and such other pertinent papers
20 as may be required by the director, to show the gross quantity of ethanol
21 expressed in gallons or the gross value of electricity produced by
22 renewable energy facilities, produced or generated by the producer and
23 located in this state by facilities that are owned by the producer and
24 located in this state.

25 Sec. 7. (a) Every producer shall make and keep a complete and
26 accurate record in the form required by the director showing the gross
27 quantity of ethanol expressed in gallons or the gross value of electricity
28 produced from renewable resources in this state, as the case may be, the
29 price paid therefor and the date of purchase. Such records shall at all times
30 during business hours of the day be available for and subject to inspection
31 by the director, or the director's duly authorized agents and employees, for
32 a period of three years from the last day of the calendar year to which the
33 records pertain. Such records shall be preserved during the entire period
34 during with they are subject to inspection by the director, unless the
35 director in writing previously authorized their disposal.

36 (b) The amount of taxes imposed by this act is to be assessed within
37 three years after the return is filed. In the case of a false or fraudulent
38 return with intent to evade tax, the tax may be assessed or a proceeding in
39 court for collection of such tax may be begun at any time, within two years
40 from the discovery of such fraud. The provisions of K.S.A. 79-3226, and
41 amendments thereto, relating to procedures for contesting a proposed
42 assessment of additional tax shall apply as if set forth in this section. No
43 refund shall be allowed by the director after three years from the date the

1 return was filed, or one year after the assessment made, whichever is the
2 later date unless before the expiration of such period a claim therefor is
3 filed by the taxpayer. No suit or action to recover on any claim for refund
4 shall be commenced until after the expiration of six months from the date
5 of filing a claim therefor with the director.

6 (c) Before the expiration of time prescribed in this section for the
7 assessment of additional tax or the filing of a claim for refund, the director
8 is hereby authorized to enter into an agreement in writing with the
9 taxpayer consenting to the extension of the periods of limitations for the
10 assessment of tax or for the filing of a claim for refund, at any time prior to
11 the expiration of the periods of limitations. The periods so agreed upon
12 may be extended by subsequent agreements in writing made before the
13 expiration of the periods previously agreed upon.

14 Sec. 8. (a) All taxes, penalties and interest received by the director
15 under this act shall be remitted to the state treasurer in accordance with the
16 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
17 each such remittance, the state treasurer shall deposit the entire amount in
18 the state treasury, less amounts withheld as provided in subsection (b), to
19 the credit of the state general fund.

20 (b) A refund fund, designated as "renewable resources tax refund
21 fund," not to exceed \$100,000, shall be set apart and maintained by the
22 director from taxes collected pursuant to this act and estimated tax
23 collections and held by the state treasurer for prompt payment of all taxes
24 imposed and collected under this act. The refund fund shall be maintained
25 with a balance in such amount, within the limit set by this section, as the
26 director shall determine is necessary to meet current refunding
27 requirements under this act. In the event the refund fund established by
28 this section is, at any time, insufficient to provide for the payment of
29 refunds due claimants thereof, the director shall certify the amount of
30 additional moneys required to the director of accounts and reports who
31 shall promptly transfer the required amount from the state general fund to
32 the renewable energy generation tax refund fund, and notify the state
33 treasurer, who shall make the proper entry in the records.

34 Sec. 9. The secretary of revenue is hereby authorized to adopt rules
35 and regulations necessary to implement and administer the provisions of
36 this act.

37 Sec. 10. This act shall take effect and be in force from and after its
38 publication in the statute book.