

## HOUSE BILL No. 2395

By Committee on Taxation

3-23

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9 AN ACT concerning income taxation; relating to refunds; amending  
10 K.S.A. 2008 Supp. 79-32,105 and repealing the existing section.

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

13 Section 1. K.S.A. 2008 Supp. 79-32,105 is hereby amended to read  
14 as follows: 79-32,105. (a) The director shall remit the entire amount col-  
15 lected under the provisions of this act and from the income tax imposed  
16 upon individuals, corporations, estates or trusts pursuant to the “Kansas  
17 income tax act” less amounts withheld as provided in subsection (b) and  
18 any amounts credited to the IMPACT program repayment fund or the  
19 IMPACT program services fund under K.S.A. 74-50,107 and amend-  
20 ments thereto to the state treasurer in accordance with the provisions of  
21 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
22 remittance, the state treasurer shall deposit the entire amount in the state  
23 treasury to the credit of the state general fund.

24 (b) A revolving fund, designated as “income tax refund fund” not to  
25 exceed \$4,000,000 shall be set apart and maintained by the director from  
26 income tax collections, franchise tax collections, withholding tax collec-  
27 tions, and estimated tax collections and held by the state treasurer for  
28 prompt payment of all income tax refunds and franchise tax refunds, for  
29 the payment of interest as provided in subsection (e), for payment of  
30 homestead property tax refunds in accordance with the homestead prop-  
31 erty tax refund act and for payment of property tax refunds allowed pur-  
32 suant to the provisions of K.S.A. 2008 Supp. 79-255, and amendments  
33 thereto. The fund shall be in such amount, within the limit set by this  
34 section, as the director determines is necessary to meet current refunding  
35 requirements under this act.

36 (c) If the director discovers from the examination of the return, or  
37 upon claim duly filed by the taxpayer or upon final judgment of the court  
38 that the income tax, withholding tax, declaration of estimated tax or any  
39 penalty or interest paid by or credited to any taxpayer is in excess of the  
40 amount legally due for such tax or any other tax owed the state of Kansas,  
41 *within 30 days of the date the return was filed by the taxpayer, except*  
42 *that such time requirement shall not apply to any return filed by a tax-*  
43 *payer if the director determines that further examination and information*

1 *is necessary to determine facts and issues related to the tax liability of the*  
2 *taxpayer, the director shall certify to the director of accounts and reports*  
3 *the name of the taxpayer, the amount of refund and such other infor-*  
4 *mation as the director may require. ~~Upon~~ Within 10 days of receipt of*  
5 *such certification the director of accounts and reports shall issue a warrant*  
6 *on the state treasurer for the payment to the taxpayer out of the fund*  
7 *provided in subsection (b), except that no refund shall be made for a sum*  
8 *less than \$5, but such amount may be claimed by the taxpayer as a credit*  
9 *against the taxpayer's tax liability in the taxpayer's next succeeding taxable*  
10 *year.*

11 (d) When a resident taxpayer dies, and the director determines that  
12 a refund is due the claimant not in excess of \$100, the director shall certify  
13 to the director of accounts and reports the name and address of the  
14 claimant entitled to the refund and the amount of the refund. A refund  
15 may be made upon a claim duly made on behalf of the estate of the  
16 deceased or in the absence of any such claim upon a claim by a surviving  
17 spouse and if none upon the claim by any heir at law. Upon receipt of  
18 such certification the director of accounts and reports shall issue a warrant  
19 on the state treasurer for the payment to the claimant out of the fund  
20 provided in subsection (b).

21 (e) (1) Interest shall be allowed and paid at the rate of ~~12% per~~  
22 ~~annum upon any overpayment of the income tax imposed upon individ-~~  
23 ~~uals, corporations, estates or trusts pursuant to the Kansas income tax act~~  
24 ~~for any period prior to January 1, 1995, 6% per annum for the period~~  
25 ~~commencing on January 1, 1995, and ending on December 31, 1997, and~~  
26 ~~at the rate prescribed and determined pursuant to K.S.A. 79-2968, and~~  
27 ~~amendments thereto, for any period thereafter.~~

28 For the purposes of this subsection:

29 ~~(1)~~ (2) (A) *For any taxpayer for which the time requirements do not*  
30 *apply as provided by subsection (c) any return filed before the last day*  
31 *prescribed for the filing thereof shall be considered as filed on such last*  
32 *day, determined without regard to any extension of time granted the*  
33 *taxpayer;*

34 ~~(2)~~ (B) *for any taxpayer, any tax paid by the taxpayer before the last*  
35 *day prescribed for its payment, any income tax withheld from the taxpayer*  
36 *during any calendar year and any amount paid by the taxpayer as esti-*  
37 *mated income tax for a taxable year shall be deemed to have been paid*  
38 *on the last day prescribed for filing the return for the taxable year to*  
39 *which such amount constitutes a credit or payment, determined without*  
40 *regard to any extension of time granted the taxpayer;*

41 ~~(3)~~ (C) *for any taxpayer, if any overpayment of tax results from a*  
42 *carryback of a net operating loss or net capital loss, such overpayment*  
43 *shall be deemed not to have been made prior to the close of the taxable*

1 year in which such net operating loss or net capital loss arises. For pur-  
2 poses of this paragraph, the return for the loss year shall not be deemed  
3 to be filed before claim for such overpayment is filed;

4 ~~(4)~~ (D) *for any taxpayer*, in the case of a credit, interest shall be  
5 allowed and paid from the date of the overpayment to the due date of  
6 the amount against which the credit is taken, except that if any overpay-  
7 ment of income tax is claimed as a credit against estimated tax for the  
8 succeeding taxable year, such amount shall be considered as a payment  
9 of the income tax for the succeeding taxable year, whether or not claimed  
10 as a credit in the return of estimated tax for such succeeding taxable year,  
11 and no interest shall be allowed or paid in such overpayment for the  
12 taxable year in which the overpayment arises;

13 ~~(5)~~ (E) *for any taxpayer*, in the case of a tax return which is filed after  
14 the last date prescribed for filing such return, determined with regard to  
15 extensions, no interest shall be allowed or paid for any period before the  
16 date on which the return is filed;

17 ~~(6)~~ (F) *for any taxpayer for which the time requirements do not apply*  
18 *as provided by subsection (c)*, in the case of a refund, interest shall be  
19 allowed and paid from the date of the overpayment to a date preceding  
20 the date of the refund check by not more than 30 days, as determined by  
21 the director, whether or not such refund check is accepted by the taxpayer  
22 after tender of such check to the taxpayer, but acceptance of such check  
23 shall be without prejudice to any right of the taxpayer to claim any ad-  
24 ditional overpayment and interest thereon; ~~and~~

25 ~~(7)~~ (G) *for any taxpayer for which the time requirements do not apply*  
26 *as provided by subsection (c)*, if any overpayment is refunded within two  
27 months after the last date prescribed, or permitted by extension of time,  
28 for filing the return of such tax, or within two months after the return  
29 was filed, whichever is later, no interest shall be allowed or paid. For the  
30 purposes of this section, an overpayment shall be deemed to have been  
31 refunded at the time the refund check in the amount of the overpayment,  
32 plus any interest due thereon, is deposited in the United States mail; *and*

33 (H) *for any taxpayer for which the time requirements apply as pro-*  
34 *vided in subsection (c), if any overpayment is refunded within the time*  
35 *period prescribed by subsection (c), no interest shall be allowed or paid.*  
36 *For the purposes of this section, an overpayment shall be deemed to have*  
37 *been refunded at the time the refund check in the amount of the over-*  
38 *payment, plus any interest due thereon, is deposited in the United States*  
39 *mail.*

40 Sec. 2. K.S.A. 2008 Supp. 79-32,105 is hereby repealed.

41 Sec. 3. This act shall take effect and be in force from and after its  
42 publication in the Kansas register.