

SENATE BILL No. 428

By Committee on Assessment and Taxation

1-22

9 AN ACT concerning taxation; relating to electronic filing of returns, re-
10 ports or other documents, fees and penalties; credits, disallowance;
11 intangibles tax, filing procedure; amending K.S.A. 12-1,104 and K.S.A.
12 2009 Supp. 75-5151, 75-5151a, 79-3220, 79-3298, 79-32,105, 79-3607
13 and 79-3609 and repealing the existing sections.
14

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

16 Section 1. K.S.A. 12-1,104 is hereby amended to read as follows: 12-
17 1,104. (a) Every taxpayer receiving earnings which are taxable under the
18 provisions of this act shall file a return on or before ~~July 1 in the year~~
19 ~~1983~~ *April 15 following the taxable year*, with the county clerk of the
20 county in which the gross earnings has acquired situs ~~and on or before~~
21 ~~April 15 of each year thereafter with the director of taxation of the state~~
22 ~~department of revenue~~. Such return shall contain such information and
23 be made upon forms prescribed ~~and provided~~ by the director of taxation
24 *and provided by the county clerk*. ~~On or before June 30 of each year, the~~
25 ~~director of taxation shall certify to the county clerk of each county the~~
26 ~~amount of taxable earnings received by each taxpayer during the taxable~~
27 ~~year of the taxpayer ending in the preceding calendar year~~. The county
28 clerk shall compute the tax due and payable on such taxable earnings of
29 each taxpayer and shall certify such amount to the county treasurer. The
30 director of taxation shall ~~include forms~~ *prescribe to the county clerk the*
31 *form* for the making of such return and a current listing of each taxing
32 subdivision imposing a tax on gross earnings derived from money, notes
33 and other evidence of debt for which the listing has been received pur-
34 suant to subsection (d) of K.S.A. 12-1,101 by July 15 of the year preceding
35 the year of imposition of the tax ~~with each state income tax return dis-~~
36 ~~tributed by the state department of revenue~~.

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

1 A return listing the gross earnings of a resident trustee or cotrustee of
2 a revocable trust created by a resident settlor which are taxable pursuant
3 to this act shall be filed by the resident settlor. A return listing the gross
4 earnings of a resident trustee or cotrustee of an irrevocable or testamen-
5 tary trust created by a resident settlor or a resident decedent which are
6 taxable pursuant to this act shall be filed by any beneficiary residing in
7 this state who receives earnings from such trust, to the extent of such
8 earnings, otherwise a return listing such gross earnings shall be filed by
9 the resident trustee to the extent that such earnings are not distributed.
10 A nonresident beneficiary shall not be obligated to file a return listing
11 earnings taxable pursuant to this act nor shall the trustee be obligated to
12 file a return listing the same to the extent they were distributed to a
13 nonresident beneficiary. Where a resident trustee or cotrustee is acting
14 under a revocable, irrevocable or testamentary trust of a nonresident set-
15 tlor or nonresident decedent, the trustee shall not be required to file a
16 return listing earnings taxable pursuant to this act, but any beneficiary of
17 such trust, residing in this state, who receives or is entitled to receive
18 such earnings from such trust shall be required to file a return. Any res-
19 ident of this state including the settlor of a revocable trust who receives
20 or is entitled to receive earnings taxable pursuant to this act from a trust,
21 not having a situs in this state, shall file a return listing such resident's
22 share of such earnings.

23 For the purposes of this act, a settlor of a revocable trust shall be
24 deemed to be entitled to the gross earnings on money, notes and other
25 evidence of debt of such trust whether or not such settlor actually receives
26 the same and a beneficiary shall be deemed to be entitled to a share of
27 such earnings if all or a specific part or percentage of the net income of
28 the trust must be distributed to such beneficiary or if the beneficiary may
29 withdraw all or a specific part of the net income. If such beneficiary may
30 receive earnings only on the exercise of discretion by the trustee or on
31 the occurrence of an event outside of the beneficiary's sole control such
32 beneficiary shall not be deemed to have received the earnings and shall
33 file a return listing only earnings actually received. If earnings of a trust
34 which are taxable pursuant to this act are accumulated and subsequently
35 distributed in a different calendar year than the year in which received
36 by the trust and if the same are reported as income under the revenue
37 laws of Kansas and regulations promulgated thereunder, and if a return
38 listing such earnings has not been filed by the trustees in the year in
39 which earned, then a return listing such earnings shall be filed by such
40 beneficiary in the year in which the same are reported under the revenue
41 laws of Kansas, but otherwise a return listing the same shall not be filed.
42 Where the beneficiary of any trust is required to file a return listing
43 earnings which are taxable pursuant to this act and which are held in

1 trust, such beneficiary for purposes of this act shall be deemed to have
2 received or to be entitled to receive such beneficiary's pro rata share of
3 the earnings without specific allocation, unless the trust provides other-
4 wise, and based upon the proportion which the beneficiary's share of the
5 earnings bears to the total earnings of the trust. A return listing gross
6 earnings taxable under this act which belong to the estate of a resident
7 decedent shall be filed by the executor or administrator. If the decedent
8 is a nonresident, such executor or administrator shall not be required to
9 file a return listing such gross earnings.

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

15 A return listing the gross earnings which are taxable pursuant to this
16 act which belong to a corporation, association or a partnership shall be
17 listed by an agent or partner. Unless subject to tax by reason of K.S.A.
18 12-1,103, *and amendments thereto*, no return listing the gross earnings
19 from money, notes and other evidence of debt collected or received by
20 any agent or representative of any person, company, or corporation, which
21 is to be transmitted immediately to such person, company or corporation,
22 shall be filed by such agent or representative, but such agent or repre-
23 sentative ~~shall~~, upon request, *shall* state under oath the amount of such
24 money or credits and ~~to whom the same has~~ *the person, company or*
25 *corporation to whom such money or credits have* been or is to be
26 transmitted.

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

29 Sec. 2. K.S.A. 2009 Supp. 75-5151 is hereby amended to read as
30 follows: 75-5151. The secretary of revenue may require, consistent with
31 sound cash management policies, that any taxpayer whose total sales tax
32 liability exceeds ~~\$45,000~~ \$25,000 in any calendar year, any taxpayer whose
33 total withholding tax liability exceeds ~~\$45,000~~ \$25,000 in any calendar
34 year, and any person owing any taxes or fees in connection with any
35 return, report or document other than for sales tax or withholding tax
36 liability, shall remit their tax liability by electronic funds transfer no later
37 than the date required for such remittance except that the secretary may
38 adopt rules and regulations prescribing alternative filing and payment
39 dates not later than the last day of the month in which the tax was oth-
40 erwise due. Electronic funds transfers may be made by wire transfers of
41 funds through the federal reserve system or by any other means estab-
42 lished by the secretary, with the approval of the state treasurer, which
43 insures the availability of such funds to the state on the date of payment.

1 Evidence of such payment shall be furnished to the secretary on or before
2 the due date of the tax as established by law. Failure to timely make such
3 payment in immediately available funds or failure to provide such evi-
4 dence of payment in a timely manner shall subject the taxpayer to penalty
5 and interest as provided by law for delinquent or deficient tax payments.
6 All sales and use tax remittances from model 1, 2 and 3 sellers must be
7 remitted electronically. Any data that accompanies a remittance must be
8 formatted using uniform tax type and payment type codes approved by
9 the secretary.

10 Sec. 3. K.S.A. 2009 Supp. 75-5151a is hereby amended to read as
11 follows: 75-5151a. (a) Subject to the requirements specified in K.S.A. 79-
12 3220, and amendments thereto, the secretary of revenue may require a
13 paid preparer *or any person required to file a tax return* to file some or
14 all of the tax returns by electronic means whenever the department of
15 revenue permits electronic filing.

16 (b) As used in this act: (1) “Electronic means” means computer gen-
17 erated electronic or magnetic media, *tefile*, web based applications or
18 similar electronic, magnetic or computer based methods or applications;

19 (2) “paid preparer” means any person or business that prepares tax
20 returns for compensation or employs or authorizes one or more persons
21 to prepare such returns. The number of returns prepared per year shall
22 be determined by including all returns prepared by the person or busi-
23 ness, and by all employees or agents of the person or business, whether
24 prepared at one location or multiple locations; and

25 (3) “tax returns” means returns or reports filed for any tax adminis-
26 tered by the department of revenue including, but not limited to, income
27 tax, *withholding tax*, sales and use tax, motor fuel tax, mineral tax and
28 other excise taxes.

29 (c) The provisions of this section shall be effective on and after July
30 1, ~~2008~~ 2010.

31 Sec. 4. K.S.A. 2009 Supp. 79-3220 is hereby amended to read as
32 follows: 79-3220. (a) (1) Each individual required to file a federal income
33 tax return and any other individual whose gross income exceeds the sum
34 of such individual’s applicable Kansas standard deduction amount and
35 Kansas personal exemption amount shall each make and sign a return or
36 statement stating specifically such items as are required by the forms and
37 rules and regulations of the secretary of revenue. If any individual is
38 unable to make a return, the return shall be made by a duly authorized
39 agent or by the guardian or other person charged with the care of the
40 person or property of such taxpayer. Notwithstanding any provision of
41 the Kansas income tax act to the contrary, all individuals not required to
42 file a Kansas income tax return hereunder shall not be liable for any tax
43 imposed pursuant to such act.

- 1 (2) In accordance with the provisions of K.S.A. 2009 Supp. 75-5151a,
2 and amendments thereto, an individual who is required to file a return
3 ~~may~~ *eligible for electronic filing shall* file such return by electronic means
4 in a manner approved by the secretary of revenue. A paid preparer who
5 prepares 50 or more returns per year shall file by electronic means not
6 less than 90% of such returns eligible for electronic filing. The require-
7 ments of this subsection may be waived by the secretary of revenue for
8 a paid preparer if the paid preparer demonstrates a hardship in complying
9 with the requirements of this subsection.
- 10 (b) Every corporation subject to taxation under this act, including,
11 but not limited to, all farmers, fruit growers, or like associations organized
12 and operated on a cooperative basis, except electric cooperative exclu-
13 sively engaged in the manufacture or distribution of electric power for
14 their members, shall make a return, or statement stating specifically such
15 items as may be required by the forms and regulations of the secretary
16 of revenue. The return shall be signed by the president, vice-president,
17 treasurer, assistant treasurer, chief accounting officer, or any other officer
18 so authorized to act. The fact that an individual's name is signed on a
19 return shall be prima facie evidence that such individual is authorized to
20 sign such return on behalf of such corporation. In cases where receivers,
21 trustees in bankruptcy or assignees are operating the property or business
22 of corporations, such receivers, trustees, or assignees shall make returns
23 for such corporations in the same manner and form as corporations are
24 required to make returns. Any tax due on the basis of such returns shall
25 be collected in the same manner as if collected from the corporation for
26 which the return is made. *Any corporation that is required to make a*
27 *return eligible for electronic filing pursuant to this subsection shall file*
28 *such return by electronic means in the manner approved by the secretary*
29 *of revenue.*
- 30 (c) Every fiduciary, except a receiver appointed by authority of law
31 in possession of part only of the property of an individual shall make and
32 sign a return for each of the individuals, estates, or trusts for which the
33 fiduciary acts, when such returns are required by the provisions of this
34 act, stating specifically such items as may be required by the forms and
35 regulations of the secretary of revenue. In the case of joint fiduciaries,
36 whether residents or nonresidents, a return may be made by any one and
37 shall be sufficient compliance with the above requirements. Any fiduciary
38 required to make a return under this act shall be subject to all of the
39 provisions of law which apply to individuals.
- 40 (d) Every partnership shall make a return for each taxable year, stat-
41 ing specifically such items as may be required by the forms and regula-
42 tions of the secretary of revenue. The returns shall be signed by any one
43 of the partners.

1 (e) *Any individual or corporation required to file a return eligible for*
2 *electronic filing pursuant to this section, filing a return other than by*
3 *electronic means in the manner approved by the secretary of revenue shall*
4 *be assessed a service fee of \$25, which fee shall be deposited in the division*
5 *of taxation processing fund. Nonpayment of such fee shall be subject to*
6 *penalties and interest pursuant to K.S.A. 79-3228, and amendments*
7 *thereto.*

8 Sec. 5. K.S.A. 2009 Supp. 79-3298 is hereby amended to read as
9 follows: 79-3298. (a) Every employer, payer, person or organization de-
10 ducting and withholding tax shall remit the taxes and file returns in ac-
11 cordance with the following provisions:

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

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

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

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

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

42 (b) Each remittance required under the provisions of subsection (a)
43 shall be accompanied by a Kansas withholding tax remittance form *and*

1 *shall be filed in the manner* prescribed ~~and furnished~~ by the director,
2 *including electronic filing. Any employer, payer, person or organization*
3 *deducting and withholding tax required by the director to file a remittance*
4 *form by electronic means who files such remittance form other than by*
5 *electronic means in the manner approved by the director shall be assessed*
6 *a service fee of \$5 per remittance form, which fee shall be deposited in*
7 *the division of taxation processing fund. Nonpayment of such fee shall be*
8 *subject to penalties and interest pursuant to K.S.A. 79-3228, and amend-*
9 *ments thereto.*

10 (c) Every employer, payer, person or organization deducting and
11 withholding tax and making remittances pursuant to subsection (a) shall
12 file a return on a form *or in the format and shall file in the manner*
13 *prescribed and furnished* by the director, *including electronic filing*, for
14 each calendar year on or before the last day of February of the following
15 year. *Any employer, payer, person or organization deducting and with-*
16 *holding tax required by the director to file a return by electronic means*
17 *who files such return other than by electronic means in the manner ap-*
18 *proved by the director shall be assessed a service fee of \$5 per return,*
19 *which fee shall be deposited in the division of taxation processing fund.*
20 *Nonpayment of such fee shall be subject to penalties and interest pursuant*
21 *to K.S.A. 79-3228, and amendments thereto.*

22 (d) The excess of any remittance over the actual taxes withheld in any
23 withholding period shall be credited against the liability for following
24 withholding periods until exhausted. A refund shall be allowed in accord-
25 ance with K.S.A. 79-32,105, and amendments thereto, where an over-
26 payment cannot be adjusted by an offset against the liability for a sub-
27 sequent withholding period. *Any person filing a return electronically and*
28 *entitled to a refund payment from the department of revenue shall provide*
29 *to the department the information, as determined by the secretary, nec-*
30 *essary to enable the department to pay such refund to such person in*
31 *electronic form by direct deposit. Any person failing to provide such in-*
32 *formation or refusing to accept such refund payment by direct deposit in*
33 *electronic form shall be assessed a service fee of \$5, which fee shall be*
34 *deposited in the division of taxation processing fund.*

35 (e) For purposes of determining filing requirements, determinations
36 of amounts withheld during a calendar year by employers, payers, persons
37 or organizations deducting and withholding tax shall be made by the di-
38 rector upon the basis of amounts withheld by those employers, payers,
39 persons or organizations during the preceding calendar year or by esti-
40 mates in cases of employers, payers, persons or organizations having no
41 previous withholding histories. The director is hereby authorized to mod-
42 ify the filing schedule for any employer, payer, person or organization
43 deducting and withholding tax when it is apparent that the original de-

1 termination was inaccurate.

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

11 Sec. 6. K.S.A. 2009 Supp. 79-32,105 is hereby amended to read as
12 follows: 79-32,105. (a) The director shall remit the entire amount col-
13 lected under the provisions of this act and from the income tax imposed
14 upon individuals, corporations, estates or trusts pursuant to the "Kansas
15 income tax act" less amounts withheld as provided in subsection (b) and
16 any amounts credited to the IMPACT program repayment fund or the
17 IMPACT program services fund under K.S.A. 74-50,107 and amend-
18 ments thereto to the state treasurer in accordance with the provisions of
19 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
20 remittance, the state treasurer shall deposit the entire amount in the state
21 treasury to the credit of the state general fund.

22 (b) A revolving fund, designated as "income tax refund fund" not to
23 exceed \$4,000,000 shall be set apart and maintained by the director from
24 income tax collections, franchise tax collections, withholding tax collec-
25 tions, and estimated tax collections and held by the state treasurer for
26 prompt payment of all income tax refunds and franchise tax refunds, for
27 the payment of interest as provided in subsection (e), for payment of
28 homestead property tax refunds in accordance with the homestead prop-
29 erty tax refund act and for payment of property tax refunds allowed pur-
30 suant to the provisions of K.S.A. 2009 Supp. 79-255, and amendments
31 thereto. The fund shall be in such amount, within the limit set by this
32 section, as the director determines is necessary to meet current refunding
33 requirements under this act.

34 (c) If the director discovers from the examination of the return, or
35 upon claim duly filed by the taxpayer or upon final judgment of the court
36 that the income tax, withholding tax, declaration of estimated tax or any
37 penalty or interest paid by or credited to any taxpayer is in excess of the
38 amount legally due for such tax or any other tax owed the state of Kansas,
39 the director shall certify to the director of accounts and reports the name
40 of the taxpayer, the amount of refund and such other information as the
41 director may require. Upon receipt of such certification the director of
42 accounts and reports shall issue a warrant on the state treasurer for the
43 payment to the taxpayer out of the fund provided in subsection (b), except

1 that no refund shall be made for a sum less than \$5, but such amount
2 may be claimed by the taxpayer as a credit against the taxpayer's tax
3 liability in the taxpayer's next succeeding taxable year. *When any credit*
4 *is claimed for an amount less than \$5, such credit shall not be allowed.*
5 *Any person filing a return electronically and entitled to a refund payment*
6 *from the department of revenue shall provide to the department the in-*
7 *formation, as determined by the secretary, necessary to enable the de-*
8 *partment to pay such refund to such person in electronic form by direct*
9 *deposit. Any person failing to provide such information or refusing to*
10 *accept such refund payment by direct deposit in electronic form shall be*
11 *assessed a service fee of \$10, which fee shall be deposited in the division*
12 *of taxation processing fund.*

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

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

30 For the purposes of this subsection:

31 (1) Any return filed before the last day prescribed for the filing
32 thereof shall be considered as filed on such last day, determined without
33 regard to any extension of time granted the taxpayer;

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

41 (3) if any overpayment of tax results from a carryback of a net oper-
42 ating loss or net capital loss, such overpayment shall be deemed not to
43 have been made prior to the close of the taxable year in which such net

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

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

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

17 (6) in the case of a refund, interest shall be allowed and paid from
18 the date of the overpayment to a date preceding the date of the refund
19 check by not more than 30 days, as determined by the director, whether
20 or not such refund check is accepted by the taxpayer after tender of such
21 check to the taxpayer, but acceptance of such check shall be without
22 prejudice to any right of the taxpayer to claim any additional overpayment
23 and interest thereon; and

24 (7) if any overpayment is refunded within two months after the last
25 date prescribed, or permitted by extension of time, for filing the return
26 of such tax, or within two months after the return was filed, whichever is
27 later, no interest shall be allowed or paid. For the purposes of this section,
28 an overpayment shall be deemed to have been refunded at the time the
29 refund check in the amount of the overpayment, plus any interest due
30 thereon, is deposited in the United States mail.

31 Sec. 7. K.S.A. 2009 Supp. 79-3607 is hereby amended to read as
32 follows: 79-3607. (a) Retailers shall make returns to the director at the
33 times prescribed by this section *in the manner prescribed by the director*
34 *including electronic filing* upon forms *or format* prescribed ~~and furnished~~
35 by the director stating: (1) The name and address of the retailer; (2) the
36 total amount of gross sales of all tangible personal property and taxable
37 services rendered by the retailer during the period for which the return
38 is made; (3) the total amount received during the period for which the
39 return is made on charge and time sales of tangible personal property
40 made and taxable services rendered prior to the period for which the
41 return is made; (4) deductions allowed by law from such total amount of
42 gross sales and from total amount received during the period for which
43 the return is made on such charge and time sales; (5) receipts during the

1 period for which the return is made from the total amount of sales of
2 tangible personal property and taxable services rendered during such pe-
3 riod in the course of such business, after deductions allowed by law have
4 been made; (6) receipts during the period for which the return is made
5 from charge and time sales of tangible personal property made and tax-
6 able services rendered prior to such period in the course of such business,
7 after deductions allowed by law have been made; (7) gross receipts during
8 the period for which the return is made from sales of tangible personal
9 property and taxable services rendered in the course of such business
10 upon the basis of which the tax is imposed. The return shall include such
11 other pertinent information as the director may require. In making such
12 return, the retailer shall determine the market value of any consideration,
13 other than money, received in connection with the sale of any tangible
14 personal property in the course of the business and shall include such
15 value in the return. Such value shall be subject to review and revision by
16 the director as hereinafter provided. Refunds made by the retailer during
17 the period for which the return is made on account of tangible personal
18 property returned to the retailer shall be allowed as a deduction under
19 subdivision (4) of this section in case the retailer has theretofore included
20 the receipts from such sale in a return made by such retailer and paid
21 taxes therein imposed by this act. The retailer shall, at the time of making
22 such return, pay to the director the amount of tax herein imposed, except
23 as otherwise provided in this section. The director may extend the time
24 for making returns and paying the tax required by this act for any period
25 not to exceed 60 days under such rules and regulations as the secretary
26 of revenue may prescribe. When the total tax for which any retailer is
27 liable under this act, does not exceed the sum of \$80 in any calendar year,
28 the retailer shall file an annual return on or before January 25 of the
29 following year. When the total tax liability does not exceed \$3,200 in any
30 calendar year, the retailer shall file returns quarterly on or before the
31 25th day of the month following the end of each calendar quarter. When
32 the total tax liability exceeds \$3,200 in any calendar year, the retailer shall
33 file a return for each month on or before the 25th day of the following
34 month. When the total tax liability exceeds \$32,000 in any calendar year,
35 the retailer shall be required to pay the sales tax liability for the first 15
36 days of each month to the director on or before the 25th day of that
37 month. Any such payment shall accompany the return filed for the pre-
38 ceding month. A retailer will be considered to have complied with the
39 requirements to pay the first 15 days' liability for any month if, on or
40 before the 25th day of that month, the retailer paid 90% of the liability
41 for that fifteen-day period, or 50% of such retailer's liability in the im-
42 mediate preceding calendar year for the same month as the month in
43 which the fifteen-day period occurs computed at the rate applicable in

1 the month in which the fifteen-day period occurs, and, in either case, paid
2 any underpayment with the payment required on or before the 25th day
3 of the following month. Such retailers shall pay their sales tax liabilities
4 for the remainder of each such month at the time of filing the return for
5 such month. Determinations of amounts of liability in a calendar year for
6 purposes of determining filing requirements shall be made by the director
7 upon the basis of amounts of liability by those retailers during the pre-
8 ceding calendar year or by estimates in cases of retailers having no pre-
9 vious sales tax histories. The director is hereby authorized to modify the
10 filing schedule for any retailer when it is apparent that the original de-
11 termination was inaccurate. *Any retailer required by the director to file*
12 *a return by electronic means who files such return other than by electronic*
13 *means in the manner approved by the director shall be assessed a service*
14 *fee of \$5 per return, which fee shall be deposited in the division of taxation*
15 *processing fund. Nonpayment of such fee shall be subject to penalties and*
16 *interest pursuant to K.S.A. 79-3615, and amendments thereto.*

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

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

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

32 Sec. 8. K.S.A. 2009 Supp. 79-3609 is hereby amended to read as
33 follows: 79-3609. (a) Every person engaged in the business of selling tan-
34 gible personal property at retail or furnishing services taxable in this state,
35 shall keep records and books of all such sales, together with invoices, bills
36 of lading, sales records, copies of bills of sale and other pertinent papers
37 and documents. Such books and records and other papers and documents
38 shall, at all times during business hours of the day, be available for and
39 subject to inspection by the director, or the director's duly authorized
40 agents and employees, for a period of three years from the last day of the
41 calendar year or of the fiscal year of the retailer, whichever comes later,
42 to which the records pertain. Such records shall be preserved during the
43 entire period during which they are subject to inspection by the director,

1 unless the director in writing previously authorizes their disposal. Any
2 person selling tangible personal property or furnishing taxable services
3 shall be prohibited from asserting that any sales are exempt from taxation
4 unless the retailer has in the retailer's possession a properly executed
5 exemption certificate provided by the consumer claiming the exemption,
6 except as follows: (1) A retailer is relieved of liability for tax otherwise
7 applicable if the retailer obtains a fully completed exemption certificate
8 or captures the relevant data elements required by the director within 90
9 days subsequent to the date of the sale; or (2) if the retailer has not
10 obtained an exemption certificate or all relevant data elements, the re-
11 tailer, within 120 days subsequent to a request for substantiation by the
12 director, either may prove that the transaction was not subject to tax by
13 other means or obtain a fully completed exemption certificate from the
14 purchaser, taken in good faith. Otherwise, the sales shall be deemed to
15 be taxable sales under this act.

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

40 (c) Before the expiration of time prescribed in this section for the
41 assessment of additional tax or the filing of a claim for refund, the director
42 is hereby authorized to enter into an agreement in writing with the tax-
43 payer consenting to the extension of the periods of limitations for the

1 assessment of tax or for the filing of a claim for refund, at any time prior
2 to the expiration of the period of limitations. The period so agreed upon
3 may be extended by subsequent agreements in writing made before the
4 expiration of the period previously agreed upon. In consideration of such
5 agreement or agreements, interest due in excess of 48 months on any
6 additional tax shall be waived.

7 (d) Interest at the rate prescribed by K.S.A. 79-2968, and amend-
8 ments thereto, shall be allowed on any overpayment of tax computed from
9 the filing date of the return claiming the refund, except that no interest
10 shall be allowed on any such refund if the same is paid within 120 days
11 after the filing date of the return claiming the refund or the date of
12 payment, whichever is later, provided that such return or refund claim
13 satisfies the requirements specified by K.S.A. 2009 Supp. 79-3693, and
14 amendments thereto, at the time the return or refund claim is received.
15 *Any person filing a return electronically and entitled to a refund payment*
16 *from the department of revenue shall provide to the department the in-*
17 *formation, as determined by the secretary, necessary to enable the de-*
18 *partment to pay such refund to such person in electronic form by direct*
19 *deposit. Any person failing to provide such information or refusing to*
20 *accept such refund payment by direct deposit in electronic form shall be*
21 *assessed a service fee of \$5, which fee shall be deposited in the division of*
22 *taxation processing fund.*

23 (e) Notwithstanding any other provision of this section or the provi-
24 sions of the Kansas compensating tax act:

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

35 (B) Any refund of tax resulting from a final determination or adju-
36 dication with regard to any claim submitted or to be submitted for refund
37 of tax imposed by the Kansas retailers' sales tax act or the Kansas com-
38 pensating tax act based upon the provisions of subsection (kk) of K.S.A.
39 79-3606 in existence prior to its amendment by this act not described by
40 subparagraph (A) shall, with respect to any refund exceeding \$50,000, be
41 paid in equal annual installments over 10 years commencing with the year
42 of such final determination or adjudication. Interest shall not accrue dur-
43 ing the time period of such payment.

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

9 New Sec. 9. There is hereby created in the state treasury the division
10 of taxation processing fund. All moneys received by the director of taxa-
11 tion or secretary of revenue from fees and penalties pursuant to this act
12 shall be remitted to the state treasurer in accordance with the provisions
13 of K.S.A. 79-4215, and amendments thereto. Upon remittance of each
14 such remittance, the state treasurer shall deposit the entire amount in the
15 state treasury to the credit of the division of taxation processing fund. All
16 moneys credited to the division of taxation processing fund shall be used
17 by the department of revenue only for the purpose of funding techno-
18 logical improvements to tax processing systems. All expenditures from
19 the division of taxation processing fund shall be made in accordance with
20 appropriation acts, upon warrants of the director of accounts and reports
21 issued pursuant to vouchers approved by the secretary of revenue.

22 Sec. 10. K.S.A. 12-1,104 and K.S.A. 2009 Supp. 75-5151, 75-5151a,
23 79-3220, 79-3298, 79-32,105, 79-3607 and 79-3609 are hereby repealed.

24 Sec. 11. This act shall take effect and be in force from and after its
25 publication in the statute book.