

**SENATE BILL No. 369**

By Committee on Assessment and Taxation

2-2

1 AN ACT concerning taxation; relating to food sales tax refunds and  
2 homestead property tax refunds; certain confined persons; amending  
3 K.S.A. 79-3632 and 79-4505 and K.S.A. 2011 Supp. 79-3633 and 79-  
4 4502 and repealing the existing sections.  
5

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

7 Section 1. K.S.A. 79-3632 is hereby amended to read as follows: 79-  
8 3632. The purpose of K.S.A. 79-3620 and 79-3632 ~~to~~ *through* 79-3639,  
9 ~~inclusive and amendments thereto~~, shall be to provide for the refund of  
10 certain retailers' sales taxes paid upon food to persons entitled thereto  
11 under the provisions of this act. *No claim for the refund of certain*  
12 *retailers' sales taxes paid upon food filed on or after June 30, 2011, shall*  
13 *be paid or allowed for any person confined in any correctional facility, or*  
14 *portion thereof, as defined in K.S.A. 75-5202, and amendments thereto,*  
15 *any juvenile correctional facility, or portion thereof, as defined in K.S.A.*  
16 *38-2302, and amendments thereto, any correctional facility of the federal*  
17 *bureau of prisons located in the state of Kansas, or any city or county jail*  
18 *facility in the state of Kansas.*

19 Sec. 2. K.S.A. 2011 Supp. 79-3633 is hereby amended to read as  
20 follows: 79-3633. As used in K.S.A. 79-3620 and 79-3632 to 79-3639, and  
21 amendments thereto, unless the context clearly indicates otherwise:

22 (a) "Income" means adjusted gross income determined under the  
23 Kansas income tax act without regard to the modifications specified by  
24 subsections (c)(i), (ii) regarding Kansas public employee retirement  
25 system retirement benefits, (vii), (ix) and (xii) of K.S.A. 79-32,117, and  
26 amendments thereto.

27 (b) "Household" means a claimant and all other persons for whom a  
28 personal exemption is claimed who together occupy a common residence.  
29 *For purposes of this act, "household" shall not include any correctional*  
30 *facility, or portion thereof, as defined in K.S.A. 75-5202, and amendments*  
31 *thereto, any juvenile correctional facility, or portion thereof, as defined in*  
32 *K.S.A. 38-2302, and amendments thereto, any correctional facility of the*  
33 *federal bureau of prisons located in the state of Kansas, or any city or*  
34 *county jail facility in the state of Kansas.*

35 (c) "Claimant" means a person who has filed a claim for a refund or  
36 credit under the provisions of this act and was, during the entire calendar

1 year preceding the year in which the claim was filed for relief under this  
2 act, domiciled in this state, was a member of a household, for tax years  
3 commencing after December 31, 2009, had income of not more than  
4 \$35,000 in the calendar year for which a claim is filed and was: (1) A  
5 person having a disability; (2) a person other than a person included under  
6 (1), who has attained 55 years of age in the calendar year for which a  
7 claim is filed; or (3) a person other than a person included under (1) or (2)  
8 having one or more dependent children under 18 years of age residing at  
9 the person's homestead during the calendar year for which a claim is filed.  
10 *For purposes of this act, "claimant" shall not include any person confined*  
11 *in any correctional facility, or portion thereof, as defined in K.S.A. 75-*  
12 *5202, and amendments thereto, any juvenile correctional facility, or*  
13 *portion thereof, as defined in K.S.A. 38-2302, and amendments thereto,*  
14 *any correctional facility of the federal bureau of prisons located in the*  
15 *state of Kansas, or any city or county jail facility in the state of Kansas.*

16 (d) "Head of household" means the person filing a claim under the  
17 provisions of this act.

18 (e) "Disability" means: (1) Inability to engage in any substantial  
19 gainful activity by reason of any medically determinable physical or  
20 mental impairment which can be expected to result in death or has lasted  
21 or can be expected to last for a continuous period of not less than 12  
22 months, and an individual shall be determined to be under a disability only  
23 if the physical or mental impairment or impairments are of such severity  
24 that the individual is not only unable to do the individual's previous work  
25 but cannot, considering age, education and work experience, engage in any  
26 other kind of substantial gainful work which exists in the national  
27 economy, regardless of whether such work exists in the immediate area in  
28 which the individual lives or whether a specific job vacancy exists for the  
29 individual, or whether the individual would be hired if application was  
30 made for work. For purposes of the preceding sentence (with respect to  
31 any individual), "work which exists in the national economy" means work  
32 which exists in significant numbers either in the region where the  
33 individual lives or in several regions of the country; for purposes of this  
34 subsection, a "physical or mental impairment" is an impairment that results  
35 from anatomical, physiological or psychological abnormalities which are  
36 demonstrable by medically acceptable clinical and laboratory diagnostic  
37 techniques; or

38 (2) blindness and inability by reason of blindness to engage in  
39 substantial gainful activity requiring skills or abilities comparable to those  
40 of any gainful activity in which the individual has previously engaged with  
41 some regularity and over a substantial period of time.

42 (f) "Blindness" means central visual acuity of  $\frac{20}{200}$  or less in the better  
43 eye with the use of a correcting lens. An eye which is accompanied by a

1 limitation in the fields of vision such that the widest diameter of the visual  
2 field subtends an angle no greater than 20 degrees shall be considered for  
3 the purpose of this paragraph as having a central visual acuity of <sup>20</sup>/<sub>200</sub> or  
4 less.

5 Sec. 3. K.S.A. 2011 Supp. 79-4502 is hereby amended to read as  
6 follows: 79-4502. As used in this act, unless the context clearly indicates  
7 otherwise:

8 (a) "Income" means the sum of adjusted gross income under the  
9 Kansas income tax act, maintenance, support money, cash public  
10 assistance and relief, not including any refund granted under this act, the  
11 gross amount of any pension or annuity, including all monetary retirement  
12 benefits from whatever source derived, including but not limited to, all  
13 payments received under the railroad retirement act, except disability  
14 payments, payments received under the federal social security act, except  
15 that for determination of what constitutes income such amount shall not  
16 exceed 50% of any such social security payments and shall not include any  
17 social security payments to a claimant who prior to attaining full  
18 retirement age had been receiving disability payments under the federal  
19 social security act in an amount not to exceed the amount of such disability  
20 payments or 50% of any such social security payments, whichever is  
21 greater, all dividends and interest from whatever source derived not  
22 included in adjusted gross income, workers compensation and the gross  
23 amount of "loss of time" insurance. Income does not include gifts from  
24 nongovernmental sources or surplus food or other relief in kind supplied  
25 by a governmental agency, nor shall net operating losses and net capital  
26 losses be considered in the determination of income. Income does not  
27 include veterans disability pensions. Income does not include disability  
28 payments received under the federal social security act.

29 (b) "Household" means a claimant, a claimant and spouse who  
30 occupy the homestead or a claimant and one or more individuals not  
31 related as husband and wife who together occupy a homestead.

32 (c) "Household income" means all income received by all persons of  
33 a household in a calendar year while members of such household.

34 (d) "Homestead" means the dwelling, or any part thereof, whether  
35 owned or rented, which is occupied as a residence by the household and so  
36 much of the land surrounding it, as defined as a home site for ad valorem  
37 tax purposes, and may consist of a part of a multi-dwelling or multi-  
38 purpose building and a part of the land upon which it is built or a  
39 manufactured home or mobile home and the land upon which it is situated.  
40 "Owned" includes a vendee in possession under a land contract, a life  
41 tenant, a beneficiary under a trust and one or more joint tenants or tenants  
42 in common. *For purposes of this act, "homestead" shall not include any*  
43 *correctional facility, or portion thereof, as defined in K.S.A. 75-5202, and*

1 *amendments thereto, any juvenile correctional facility, or portion thereof,*  
2 *as defined in K.S.A. 38-2302, and amendments thereto, any correctional*  
3 *facility of the federal bureau of prisons located in the state of Kansas, or*  
4 *any city or county jail facility in the state of Kansas.*

5 (e) "Claimant" means a person who has filed a claim under the  
6 provisions of this act and was, during the entire calendar year preceding  
7 the year in which such claim was filed for refund under this act, except as  
8 provided in K.S.A. 79-4503, and amendments thereto, both domiciled in  
9 this state and was: (1) A person having a disability; (2) a person who is 55  
10 years of age or older; (3) a disabled veteran; (4) the surviving spouse of  
11 active duty military personnel who died in the line of duty; or (5) a person  
12 other than a person included under (1), (2), (3) or (4) having one or more  
13 dependent children under 18 years of age residing at the person's  
14 homestead during the calendar year immediately preceding the year in  
15 which a claim is filed under this act. The surviving spouse of a disabled  
16 veteran who was receiving benefits pursuant to subsection (e)(3) of this  
17 section at the time of the veterans' death, shall be eligible to continue to  
18 receive benefits until such time the surviving spouse remarries.

19 When a homestead is occupied by two or more individuals and more  
20 than one of the individuals is able to qualify as a claimant, the individuals  
21 may determine between them as to whom the claimant will be. If they are  
22 unable to agree, the matter shall be referred to the secretary of revenue  
23 whose decision shall be final.

24 *For purposes of this act, "claimant" shall not include any person*  
25 *confined in any correctional facility, or portion thereof, as defined in*  
26 *K.S.A. 75-5202, and amendments thereto, any juvenile correctional*  
27 *facility, or portion thereof, as defined in K.S.A. 38-2302, and amendments*  
28 *thereto, any correctional facility of the federal bureau of prisons located in*  
29 *the state of Kansas, or any city or county jail facility in the state of*  
30 *Kansas.*

31 (f) "Property taxes accrued" means property taxes, exclusive of  
32 special assessments, delinquent interest and charges for service, levied on  
33 a claimant's homestead in 1979 or any calendar year thereafter by the state  
34 of Kansas and the political and taxing subdivisions of the state. When a  
35 homestead is owned by two or more persons or entities as joint tenants or  
36 tenants in common and one or more of the persons or entities is not a  
37 member of claimant's household, "property taxes accrued" is that part of  
38 property taxes levied on the homestead that reflects the ownership  
39 percentage of the claimant's household. For purposes of this act, property  
40 taxes are "levied" when the tax roll is delivered to the local treasurer with  
41 the treasurer's warrant for collection. When a claimant and household own  
42 their homestead part of a calendar year, "property taxes accrued" means  
43 only taxes levied on the homestead when both owned and occupied as a

1 homestead by the claimant's household at the time of the levy, multiplied  
2 by the percentage of 12 months that the property was owned and occupied  
3 by the household as its homestead in the year. When a household owns and  
4 occupies two or more different homesteads in the same calendar year,  
5 property taxes accrued shall be the sum of the taxes allocable to those  
6 several properties while occupied by the household as its homestead  
7 during the year. Whenever a homestead is an integral part of a larger unit  
8 such as a multi-purpose or multi-dwelling building, property taxes accrued  
9 shall be that percentage of the total property taxes accrued as the value of  
10 the homestead is of the total value. For the purpose of this act, the word  
11 "unit" refers to that parcel of property covered by a single tax statement of  
12 which the homestead is a part.

13 (g) "Disability" means:

14 (1) Inability to engage in any substantial gainful activity by reason of  
15 any medically determinable physical or mental impairment which can be  
16 expected to result in death or has lasted or can be expected to last for a  
17 continuous period of not less than 12 months, and an individual shall be  
18 determined to be under a disability only if the physical or mental  
19 impairment or impairments are of such severity that the individual is not  
20 only unable to do the individual's previous work but cannot, considering  
21 age, education and work experience, engage in any other kind of  
22 substantial gainful work which exists in the national economy, regardless  
23 of whether such work exists in the immediate area in which the individual  
24 lives or whether a specific job vacancy exists for the individual, or whether  
25 the individual would be hired if application was made for work. For  
26 purposes of the preceding sentence (with respect to any individual), "work  
27 which exists in the national economy" means work which exists in  
28 significant numbers either in the region where the individual lives or in  
29 several regions of the country; for purposes of this subsection, a "physical  
30 or mental impairment" is an impairment that results from anatomical,  
31 physiological or psychological abnormalities which are demonstrable by  
32 medically acceptable clinical and laboratory diagnostic techniques; or

33 (2) blindness and inability by reason of blindness to engage in  
34 substantial gainful activity requiring skills or abilities comparable to those  
35 of any gainful activity in which the individual has previously engaged with  
36 some regularity and over a substantial period of time.

37 (h) "Blindness" means central visual acuity of  $20/200$  or less in the  
38 better eye with the use of a correcting lens. An eye which is accompanied  
39 by a limitation in the fields of vision such that the widest diameter of the  
40 visual field subtends an angle no greater than 20 degrees shall be  
41 considered for the purpose of this paragraph as having a central visual  
42 acuity of  $20/200$  or less.

43 (i) "Rent constituting property taxes accrued" means 15% of the gross

1 rent actually paid in cash or its equivalent in 2007 or any taxable year  
2 thereafter by a claimant and claimant's household solely for the right of  
3 occupancy of a Kansas homestead on which ad valorem property taxes  
4 were levied in full for that year. When a household occupies two or more  
5 different homesteads in the same calendar year, rent constituting property  
6 taxes accrued shall be computed by adding the rent constituting property  
7 taxes accrued for each property rented by the household while occupied by  
8 the household as its homestead during the year.

9 (j) "Gross rent" means the rental paid at arm's length solely for the  
10 right of occupancy of a homestead or space rental paid to a landlord for the  
11 parking of a mobile home, exclusive of charges for any utilities, services,  
12 furniture and furnishings or personal property appliances furnished by the  
13 landlord as a part of the rental agreement, whether or not expressly set out  
14 in the rental agreement. Whenever the director of taxation finds that the  
15 landlord and tenant have not dealt with each other at arms length and that  
16 the gross rent charge was excessive, the director may adjust the gross rent  
17 to a reasonable amount for the purposes of the claim.

18 (k) "Disabled veteran" means a person who is a resident of Kansas  
19 and has been honorably discharged from active service in any branch of  
20 the armed forces of the United States or Kansas national guard and who  
21 has been certified by the United States department of veterans affairs or its  
22 successor to have a 50% permanent disability sustained through military  
23 action or accident or resulting from disease contracted while in such active  
24 service.

25 Sec. 4. K.S.A. 79-4505 is hereby amended to read as follows: 79-  
26 4505. Except as provided in K.S.A. 79-4517, and amendments thereto, no  
27 claim in respect of property taxes levied in any year shall be paid or  
28 allowed unless such claim is actually filed with and in the possession of  
29 the department of revenue on or before April 15 of the year next  
30 succeeding the year in which said taxes were levied. *No claim filed on or*  
31 *after June 30, 2011, in respect of property taxes levied in any year shall be*  
32 *paid or allowed for any person confined in any correctional facility, or*  
33 *portion thereof, as defined in K.S.A. 75-5202, and amendments thereto,*  
34 *any juvenile correctional facility, or portion thereof, as defined in K.S.A.*  
35 *38-2302, and amendments thereto, any correctional facility of the federal*  
36 *bureau of prisons located in the state of Kansas, or any city or county jail*  
37 *facility in the state of Kansas.*

38 Sec. 5. K.S.A. 79-3632 and 79-4505 and K.S.A. 2011 Supp. 79-3633  
39 and 79-4502 are hereby repealed.

40 Sec. 6. This act shall take effect and be in force from and after its  
41 publication in the statute book.