

## 2012 Kansas Statutes

### **79-3609. Books and records; inspection; preservation; actions for collection; exemption certificates, requirements; refunds and credits; limitations; extension of period for making assessment or filing refund claim; interest on overpayments; payment of certain refunds of tax paid on manufacturing and processing equipment.**

(a) Every person engaged in the business of selling tangible personal property at retail or furnishing services taxable in this state, shall keep records and books of all such sales, together with invoices, bills of lading, sales records, copies of bills of sale and other pertinent papers and documents. Such books and records and other papers and documents shall, at all times during business hours of the day, be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year or of the fiscal year of the retailer, whichever comes later, to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorizes their disposal. Any person selling tangible personal property or furnishing taxable services shall be prohibited from asserting that any sales are exempt from taxation unless the retailer has in the retailer's possession a properly executed exemption certificate provided by the consumer claiming the exemption, except as follows: (1) A retailer is relieved of liability for tax otherwise applicable if the retailer obtains a fully completed exemption certificate or captures the relevant data elements required by the director within 90 days subsequent to the date of the sale; or (2) if the retailer has not obtained an exemption certificate or all relevant data elements, the retailer, within 120 days subsequent to a request for substantiation by the director, either may obtain a fully completed exemption certificate from the purchaser, taken in good faith which meets the requirements specified in this subsection, or obtain other information establishing that the transaction was not subject to tax. Otherwise, the sales shall be deemed to be taxable sales under this act. The seller shall obtain an exemption certificate that claims an exemption that was authorized pursuant to Kansas law on the date of the transaction in the jurisdiction where the transaction is sourced pursuant to law, could be applicable to the item being purchased and is reasonable for the purchaser's type of business. If the seller obtains an exemption certificate or other information as described in this subsection, the seller is relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction, and it must be established that the seller had knowledge or had reason to know at the time the information was provided that the information was materially false.

(b) The amount of tax imposed by this act is to be assessed within three years after the return is filed, and no proceedings in court for the collection of such taxes shall begin after the expiration of such period. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may begin at any time within two years from the discovery of such fraud. No assessment shall be made for any period preceding the date of registration of the retailer by more than three years except in cases of fraud. For any refund or credit claim filed after July 1, 2011, no refund or credit shall be allowed by the director after three years from the due date of the return for the reporting period as provided by K.S.A. 79-3607, and amendments thereto, unless before the expiration of such period a claim therefor is filed by the taxpayer, and, except as otherwise provided in K.S.A. 2012 Supp. 79-3694, and amendments thereto, no suit or action to recover on any claim for refund shall be commenced, until after the expiration of six months from the date of filing such claim satisfying the requirements specified by K.S.A. 2012 Supp. 79-3693, and amendments thereto, therefor with the director. A refund claim shall not be deemed filed unless such claim is complete as required by K.S.A. 2012 Supp. 79-3693, and amendments thereto. For all mailed returns, including refund claims, each return or refund claim shall be presumed to have been filed with the department on the postmark date of such return or refund claim or if such date is illegible, the date three days prior to the date such return or refund claim is received.

(c) Before the expiration of time prescribed in this section for the assessment of additional tax or the filing of a claim for refund, the director is hereby authorized to enter into an agreement in writing with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund, at any time prior to the expiration of the period of limitations. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

(d) Interest at the rate prescribed by K.S.A. 79-2968, and amendments thereto, shall be allowed on any overpayment of tax computed from the filing date of the return claiming the refund, except that no interest shall be allowed on any such refund if the same is paid within 120 days after the filing date of the return claiming the refund or the date of payment, whichever is later, provided that such return or refund claim satisfies the requirements specified by K.S.A. 2012 Supp. 79-3693, and amendments thereto, at the time the return or refund claim is received.

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

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

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

(2) No claim for refund of tax imposed by the Kansas retailers' sales tax act or the Kansas compensating tax act based upon the application of the provisions of subsection (n) of K.S.A. 79-3606, and amendments thereto, pursuant to its interpretation by the court of appeals of the state of Kansas in its opinion filed on August 13, 1999, in the case entitled *In re appeal of Water District No. 1 of Johnson County* shall be allowed for tax paid prior to the effective

date of this act. The provisions of this subsection shall not be applicable to water district no. 1 of Johnson county.

**History:** L. 1937, ch. 374, § 9; L. 1947, ch. 463, § 5; L. 1969, ch. 465, § 1; L. 1977, ch. 339, § 1; L. 1988, ch. 386, § 5; L. 1992, ch. 198, § 2; L. 1997, ch. 126, § 2; L. 2000, ch. 123, § 2; L. 2007, ch. 155, § 6; L. 2009, ch. 142, § 9; L. 2010, ch. 123, § 12; L. 2011, ch. 88, § 6; July 1.