

HOUSE BILL No. 2302

By Representatives Whipple, Hodge and Ohaebosim

2-13

1 AN ACT concerning taxation; enacting the food sales tax refund act;
2 sunsetting the food sales tax credit; amending K.S.A. 2018 Supp. 79-
3 32,271 and repealing the existing section.

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

6 New Section 1. The provisions of sections 1 through 9, and
7 amendments thereto, shall be known and may be cited as the food sales tax
8 refund act.

9 New Sec. 2. As used in the food sales tax refund act, unless the
10 context clearly indicates otherwise:

11 (a) "Income" means adjusted gross income determined under the
12 Kansas income tax act without regard to the modifications specified by
13 K.S.A. 79-32,117(c)(i), (ii), (vii), (ix) or (xii), and amendments thereto.
14 Notwithstanding the provisions of this subsection, the term "income" shall
15 include Kansas public employee retirement system benefits.

16 (b) "Household" means a claimant and all other persons for whom a
17 personal exemption is claimed who together occupy a common residence.

18 (c) "Claimant" means a person who has filed a claim for a refund or
19 credit under the provisions of this act and was, during the entire calendar
20 year preceding the calendar year in which the claim was filed for relief
21 under this act, domiciled in this state, was a member of a household, had
22 income of not more than \$36,700 in the calendar year for which a claim
23 was filed and was: (1) A person having a disability; (2) a person other than
24 a person included under paragraph (1), who has attained 55 years of age in
25 the calendar year for which a claim is filed; or (3) a person other than a
26 person included under paragraph (1) or (2) having one or more dependent
27 children under 18 years of age residing at the person's homestead during
28 the calendar year for which a claim is filed.

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

31 (e) "Disability" means: (1) Inability to engage in any substantial
32 gainful activity by reason of any medically determinable physical or
33 mental impairment which can be expected to result in death or has lasted
34 or can be expected to last for a continuous period of not less than 12
35 months, and an individual shall be determined to have a disability only if
36 the physical or mental impairment or impairments are of such severity that

1 the individual is not only unable to do the individual's previous work, but
2 cannot, considering age, education and work experience, engage in any
3 other kind of substantial gainful work which exists in the national
4 economy, regardless of whether such work exists in the immediate area in
5 which the individual lives or whether a specific job vacancy exists for the
6 individual, or whether the individual would be hired if application was
7 made for work. For purposes of the preceding sentence with respect to any
8 individual, "work which exists in the national economy" means work
9 which exists in significant numbers either in the region where the
10 individual lives or in several regions of the country; for purposes of this
11 subsection, a "physical or mental impairment" is an impairment that results
12 from anatomical, physiological or psychological abnormalities which are
13 demonstrable by medically acceptable clinical and laboratory diagnostic
14 techniques; or

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

19 (f) "Blindness" means central visual acuity of $^{20}/_{200}$ or less in the better
20 eye with the use of a correcting lens. An eye which is accompanied by a
21 limitation in the fields of vision such that the widest diameter of the visual
22 field subtends an angle no greater than 20 degrees shall be considered for
23 the purpose of this subsection as having a central visual acuity of $^{20}/_{200}$ or
24 less.

25 New Sec. 3. The right to file a claim for a refund under the food sales
26 tax refund act shall be personal to the claimant and shall not survive the
27 claimant's death, but such right may be exercised on behalf of a claimant
28 by the claimant's legal guardian, conservator or attorney-in-fact. When a
29 claimant dies after having filed a timely claim, the amount thereof shall be
30 disbursed to another member of the household as determined by the
31 director of taxation. If the claimant was the only member of the claimant's
32 household, the claim may be paid to the claimant's executor or
33 administrator, but if neither is appointed and qualified, the amount of the
34 claim may be paid upon a claim duly made to any heir at law. In the
35 absence of any such claim within two years of the filing of the claim, the
36 amount of the claim shall escheat to the state.

37 New Sec. 4. (a) (1) A claimant shall be entitled to a refund of
38 retailers' sales taxes paid upon food during the calendar year 2019 and
39 each year thereafter in the amount hereinafter provided. There shall be
40 allowed for each member of a household of a claimant having income of
41 \$18,350 or less, an amount equal to \$94. There shall be allowed for each
42 member of a household of a claimant having income of more than \$18,350
43 but not more than \$36,700, an amount equal to \$47. There shall be allowed

1 for a claimant who qualifies for an additional personal exemption amount
2 pursuant to K.S.A. 79-32,121, and amendments thereto, an additional
3 amount of \$47 or \$94, as the case requires. All such claims shall be paid
4 from the sales tax refund fund upon warrants of the director of accounts
5 and reports pursuant to vouchers approved by the director of taxation or by
6 a person or persons designated by the director.

7 (2) As an alternative to the procedure described in subsection (a)(1),
8 for all taxable years commencing after December 31, 2018, there shall be
9 allowed as a credit against the tax liability of a resident individual imposed
10 under the Kansas income tax act an amount equal to \$47 or \$94, as the
11 case requires, for each member of a household. There shall be allowed for
12 a claimant who qualifies for an additional personal exemption amount
13 pursuant to K.S.A. 79-32,121, and amendments thereto, an additional
14 amount of \$47 or \$94, as the case requires. If the amount of such tax credit
15 exceeds the claimant's income tax liability for such taxable year, such
16 excess amount shall be refunded to the claimant.

17 (b) A head of household shall make application for refunds for all
18 members of the same household upon a common form provided for the
19 making of joint claims. All claims paid to members of the same household
20 shall be paid as a joint claim by means of a single warrant.

21 (c) No claim for a refund of taxes under the provisions of the food
22 sales tax refund act shall be paid or allowed unless such claim is actually
23 filed with and in the possession of the department of revenue on or before
24 April 15 of the year next succeeding the year in which such taxes were
25 paid. The director of taxation may: (1) Extend the time for filing any claim
26 under the provisions of this act when good cause exists therefor; or (2)
27 accept a claim filed after the deadline for filing in the case of sickness,
28 absence or disability of the claimant if such claim has been filed within
29 four years of such deadline.

30 (d) In the case of all tax years commencing after December 31, 2018,
31 the threshold income amounts prescribed in this section and section 2(c),
32 and amendments thereto, and the amounts of refund of taxes and the
33 amounts of the tax credit, both as prescribed in this section, shall be
34 increased by an amount equal to such threshold amount multiplied by the
35 cost-of-living adjustment determined under section 1(f)(3) of the federal
36 internal revenue code for the calendar year in which the taxable year
37 commences.

38 New Sec. 5. (a) In administering the food sales tax refund act, the
39 division of taxation shall make available suitable forms with instructions
40 for claimants. Copies of such forms shall also be made available to all
41 county clerks and county treasurers in sufficient numbers to supply
42 claimants residing in their respective counties. It shall be the duty of the
43 county clerk to assist any claimant seeking assistance in the filing of a

1 claim under the provisions of this act. The county treasurer of each county
2 shall mail to each taxpayer with the property tax statement of such
3 taxpayer information on the claiming of a refund of retailers' sales taxes
4 paid upon food, which shall be provided by the secretary of revenue.

5 (b) The secretary of revenue is hereby authorized to adopt such rules
6 and regulations as may be necessary for the administration of the
7 provisions of this act.

8 New Sec. 6. Every claimant for the refund of taxes under the
9 provisions of the food sales tax refund act shall supply to the division of
10 taxation in support of a claim, a valid social security number issued by the
11 social security administration for each claimant, every household member
12 and every dependent child, a clear statement as to whether such claimant
13 qualifies for a refund under the provisions of section 2, and amendments
14 thereto, reasonable proof of age or disability and household income. A
15 claim alleging disability shall be supported by a report of the examining
16 physician of the claimant with a statement or certificate that the applicant
17 has a disability within the meaning of section 2, and amendments thereto.

18 New Sec. 7. In any case in which it is determined that a claim was
19 filed with fraudulent intent, the claim shall be disallowed, and, if the claim
20 has been paid, the amount paid may be recovered by assessment as income
21 taxes are assessed, and such assessment shall bear interest from the date of
22 payment of the claim, until recovered, at the rate prescribed by K.S.A. 79-
23 2968(a), and amendments thereto. The claimant in such case, and any
24 person who assisted in the preparation or filing of such claim or supplied
25 information upon which such claim was prepared, with fraudulent intent,
26 shall be guilty of a class B misdemeanor.

27 New Sec. 8. No claim for refund under the provisions of sections 1
28 through 9, and amendments thereto, shall be allowed any claimant who
29 fails to provide a valid social security number issued by the social security
30 administration for the claimant, every household member and every
31 dependent child.

32 New Sec. 9. The director of taxation shall examine all claims for
33 refund under the provisions of sections 1 through 9, and amendments
34 thereto, and shall issue final determinations thereon in the manner
35 prescribed by K.S.A. 79-3226, and amendments thereto, relating to income
36 taxes.

37 Sec. 10. K.S.A. 2018 Supp. 79-32,271 is hereby amended to read as
38 follows: 79-32,271. (a) For any taxable year commencing after December
39 31, 2014, *and ending prior to January 1, 2019*, a credit shall be allowed
40 against the tax imposed by the Kansas income tax act on the Kansas
41 taxable income of an individual income taxpayer who purchased food in
42 this state, had federal adjusted gross income for the tax year that did not
43 exceed \$30,615, and meets the qualifications in subsections (b) and (c).

1 (b) During the entire tax year a taxpayer filing single, head of
2 household, or married filing separate, or the taxpayer and the taxpayer's
3 spouse if married filing jointly, must be domiciled in this state. For
4 purposes of this credit, "domicile" shall not include any correctional
5 facility, or portion thereof, as defined in K.S.A. 75-5202, and amendments
6 thereto, any juvenile correctional facility, or portion thereof, as defined in
7 K.S.A. 38-2302, and amendments thereto, any correctional facility of the
8 federal bureau of prisons located in the state of Kansas, or any city or
9 county jail facility in the state of Kansas.

10 (c) During the entire tax year a taxpayer filing single, head of
11 household, or married filing separate, or the taxpayer or the taxpayer's
12 spouse if married filing jointly, must be either: (1) A person having a
13 disability, regardless of age; (2) a person without a disability who is 55
14 years of age or older; or (3) a person without a disability who is younger
15 than 55 years of age who claims an exemption for one or more dependent
16 children under 18 years of age.

17 (d) The amount of the credit shall be \$125 for every exemption
18 claimed on the taxpayer's federal income tax return, except that no
19 exemption shall be counted for a dependent unless the dependent is a child
20 under 18 years of age.

21 (e) The credit allowed under this provision shall be applied against
22 the taxpayer's income tax liability after all other credits allowed under the
23 income tax act. It shall not be refundable and may not be carried forward.

24 (f) (1) Every taxpayer claiming the credit shall supply the division in
25 support of a claim, reasonable proof of domicile, age and disability.

26 (2) A claim alleging disability shall be supported by a report of the
27 examining physician of the claimant with a statement or certificate that the
28 applicant has a disability as defined in subsection (g).

29 (g) "Disability" means: (1) Inability to engage in any substantial
30 gainful activity by reason of any medically determinable physical or
31 mental impairment which can be expected to result in death or has lasted
32 or can be expected to last for a continuous period of not less than 12
33 months, and an individual shall be determined to be under a disability only
34 if the physical or mental impairment or impairments are of such severity
35 that the individual is not only unable to do the individual's previous work
36 but cannot, considering age, education and work experience, engage in any
37 other kind of substantial gainful work which exists in the national
38 economy, regardless of whether such work exists in the immediate area in
39 which the individual lives or whether a specific job vacancy exists for the
40 individual, or whether the individual would be hired if application was
41 made for work. For purposes of this paragraph, with respect to any
42 individual, "work which exists in the national economy" means work
43 which exists in significant numbers either in the region where the

1 individual lives or in several regions of the country; and "physical or
2 mental impairment" means an impairment that results from anatomical,
3 physiological or psychological abnormalities which are demonstrable by
4 medically acceptable clinical and laboratory diagnostic techniques; or

5 (2) blindness and inability by reason of blindness to engage in
6 substantial gainful activity requiring skills or abilities comparable to those
7 of any gainful activity in which the individual has previously engaged with
8 some regularity and over a substantial period of time. For purposes of this
9 paragraph, "blindness" means central visual acuity of $^{20}/_{200}$ or less in the
10 better eye with the use of a correcting lens. An eye which is accompanied
11 by a limitation in the fields of vision such that the widest diameter of the
12 visual field subtends an angle no greater than 20 degrees shall be
13 considered for the purpose of this paragraph as having a central visual
14 acuity of $^{20}/_{200}$ or less.

15 (h) The secretary of revenue is hereby authorized to adopt such rules
16 and regulations as may be necessary for the administration of the
17 provisions of this section.

18 Sec. 11. K.S.A. 2018 Supp. 79-32,271 is hereby repealed.

19 Sec. 12. This act shall take effect and be in force from and after its
20 publication in the statute book.