

**HOUSE BILL No. 2401**

By Committee on Taxation

3-5

1 AN ACT concerning taxation; relating to excise taxes, ethanol production,  
2 electricity generated from renewable resources.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in sections 1 through 7, and amendments thereto:

6 (a) "Director" means the director of taxation;

7 (b) "person" means any natural person, firm, copartnership, joint  
8 venture, association, corporation, estate, trust, or any other group or  
9 combination acting as a unit, and the plural as well as the singular number;

10 (c) "producer" means any person that produces electricity from  
11 renewable resources. The term "producer" does not include any person  
12 who produces electricity from renewable resources for personal  
13 consumption so long as that person does not sell or transfer more than 500  
14 kilowatt hours of excess production in any 24-hour period during any  
15 calendar year; and

16 (d) "renewable resources" means wind, biomass, solar, hydro or  
17 geothermal sources.

18 Sec. 2. (a) There is hereby imposed an excise tax of 4.33% of the  
19 gross value of the electricity produced from renewable resources in this  
20 state. The tax shall be imposed upon the production of any electricity  
21 produced from renewable resources for sale or trade on or after January 1,  
22 2016, and shall be paid by the person producing such electricity. The tax  
23 shall be imposed on each megawatt hour of electricity produced from  
24 renewable resources at the point of interconnection with an electric  
25 transmission line.

26 (b) There is hereby imposed an excise tax upon the production of  
27 ethanol in this state for sale. The tax shall be paid by the person producing  
28 such ethanol. The rate of such tax shall be 4.33% of the gross value of  
29 each gallon of ethanol subject to tax under this act.

30 Sec. 3. No tax shall be imposed upon electricity which is produced  
31 from any generating facility owned or operated by the federal government,  
32 state of Kansas or by any county or municipality in this state. No tax shall  
33 be imposed upon electricity which is produced for the personal  
34 consumption of the producer, including any excess production of  
35 electricity that does not exceed 500 kilowatt hours in any 24-hour period.

36 Sec. 4. (a) On or before February 1 of each year, any person

1 producing ethanol or electricity from renewable resources within this state  
2 which is subject to the tax imposed by section 2, and amendments thereto,  
3 shall file with the director at the director's office in Topeka, Kansas, upon a  
4 form prescribed, prepared and furnished by the director a report certifying  
5 the number of gallons of ethanol or the gross value of electricity produced  
6 in this state during the preceding calendar year, as the case may be.

7 (b) At the time the report is filed, every person producing ethanol or  
8 electricity from renewable resources in this state shall compute and pay to  
9 the director at the director's office the amount of taxes due to the state  
10 based on the aggregate number of gallons of ethanol produced or the gross  
11 value of electricity generated by renewable energy, during the preceding  
12 calendar year, as the case may be.

13 (c) All taxes imposed under the provisions of this act not paid on or  
14 before February 1 of the year succeeding the calendar year in which the  
15 taxable ethanol was produced or electricity was generated shall be deemed  
16 delinquent and shall bear interest at the rate per month, or fraction thereof,  
17 prescribed by K.S.A. 79-2968(a), and amendments thereto, from such due  
18 date until paid. In addition, there is hereby imposed upon all amounts of  
19 such taxes remaining due and unpaid after such due date a penalty in the  
20 amount of 5%. The penalty shall be added to and collected by the director  
21 as part of the taxes.

22 (d) If any person fails to make or file a return and remit the tax as  
23 required by subsection (a), the director shall impose a penalty of 5% for  
24 each 30-day period, or fraction thereof, elapsing between the due date of  
25 the return and the date filed, unless the person for good cause obtains from  
26 the director an extension of time for filing prior to the due date for filing.  
27 In the event of an extension, the person shall pay interest due on  
28 delinquent payments set forth in subsection (c). In no event shall the total  
29 penalty imposed by this subsection exceed 25% of the tax due. If the  
30 person furnishes evidence to the director that the delinquency was due to  
31 causes beyond the person's reasonable control, and if in the opinion of the  
32 director the delinquency was not the result of willful negligence of the  
33 person, the penalty or interest, or both, may be waived or reduced by the  
34 director.

35 (e) If any person files a false or fraudulent return or fails to file a  
36 return with intent to evade the tax imposed by this act, there shall be added  
37 to the amount of the deficiency determined by the director a penalty equal  
38 to 100% of the deficiency together with the interest at the rate per month  
39 or fraction thereof, prescribed by K.S.A. 79-2968(a), and amendments  
40 thereto, on such deficiency from the date such tax was due to the date of  
41 payment, in addition to all other penalties prescribed by law.

42 Sec. 5. (a) The director, or any deputy or agent appointed in writing  
43 by the director, shall examine returns and shall determine the correct

1 amount of tax. If the amount of tax found due is greater than the amount  
2 paid, or if a claim for a refund is denied, notice shall be mailed to the  
3 producer. Within 60 days after the mailing of such notice, the producer  
4 may request an informal conference with the secretary of revenue or the  
5 secretary's designee. Based on the evidence presented at such informal  
6 conference, the secretary of revenue or the secretary's designee shall make  
7 a final determination within the period prescribed by K.S.A. 79-3226, and  
8 amendments thereto, and shall notify the producer of such decision and, if  
9 additional amounts are found to be due, such decision shall be  
10 accompanied by a notice and demand for payment. Notice under this  
11 section shall be sent by first class mail.

12 (b) The tax shall be paid within 20 days thereafter, together with  
13 interest at the rate per month prescribed by K.S.A. 79-2968(a), and  
14 amendments thereto, on the additional tax from the date the tax was due,  
15 unless an appeal is taken in the manner provided by law, but no additional  
16 tax shall be assessed for less than \$5. Interest at such rate shall continue to  
17 accrue on any additional tax liability during the course of any appeal.

18 Sec. 6. Each producer shall maintain and keep, for a period of three  
19 years, the necessary instruments, records and such other pertinent papers  
20 as may be required by the director, to show the gross quantity of ethanol  
21 expressed in gallons or the gross value of electricity produced by  
22 renewable energy facilities, produced or generated by the producer and  
23 located in this state by facilities that are owned by the producer and  
24 located in this state.

25 Sec. 7. (a) Every producer shall make and keep a complete and  
26 accurate record in the form required by the director showing the gross  
27 quantity of ethanol expressed in gallons or the gross value of electricity  
28 produced from renewable resources in this state, as the case may be, the  
29 price paid therefor and the date of purchase. Such records shall at all times  
30 during business hours of the day be available for and subject to inspection  
31 by the director, or the director's duly authorized agents and employees, for  
32 a period of three years from the last day of the calendar year to which the  
33 records pertain. Such records shall be preserved during the entire period  
34 during with they are subject to inspection by the director, unless the  
35 director in writing previously authorized their disposal.

36 (b) The amount of taxes imposed by this act is to be assessed within  
37 three years after the return is filed. In the case of a false or fraudulent  
38 return with intent to evade tax, the tax may be assessed or a proceeding in  
39 court for collection of such tax may be begun at any time, within two years  
40 from the discovery of such fraud. The provisions of K.S.A. 79-3226, and  
41 amendments thereto, relating to procedures for contesting a proposed  
42 assessment of additional tax shall apply as if set forth in this section. No  
43 refund shall be allowed by the director after three years from the date the

1 return was filed, or one year after the assessment made, whichever is the  
2 later date unless before the expiration of such period a claim therefor is  
3 filed by the taxpayer. No suit or action to recover on any claim for refund  
4 shall be commenced until after the expiration of six months from the date  
5 of filing a claim therefor with the director.

6 (c) Before the expiration of time prescribed in this section for the  
7 assessment of additional tax or the filing of a claim for refund, the director  
8 is hereby authorized to enter into an agreement in writing with the  
9 taxpayer consenting to the extension of the periods of limitations for the  
10 assessment of tax or for the filing of a claim for refund, at any time prior to  
11 the expiration of the periods of limitations. The periods so agreed upon  
12 may be extended by subsequent agreements in writing made before the  
13 expiration of the periods previously agreed upon.

14 Sec. 8. (a) All taxes, penalties and interest received by the director  
15 under this act shall be remitted to the state treasurer in accordance with the  
16 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
17 each such remittance, the state treasurer shall deposit the entire amount in  
18 the state treasury, less amounts withheld as provided in subsection (b), to  
19 the credit of the state general fund.

20 (b) A refund fund, designated as "renewable resources tax refund  
21 fund," not to exceed \$100,000, shall be set apart and maintained by the  
22 director from taxes collected pursuant to this act and estimated tax  
23 collections and held by the state treasurer for prompt payment of all taxes  
24 imposed and collected under this act. The refund fund shall be maintained  
25 with a balance in such amount, within the limit set by this section, as the  
26 director shall determine is necessary to meet current refunding  
27 requirements under this act. In the event the refund fund established by  
28 this section is, at any time, insufficient to provide for the payment of  
29 refunds due claimants thereof, the director shall certify the amount of  
30 additional moneys required to the director of accounts and reports who  
31 shall promptly transfer the required amount from the state general fund to  
32 the renewable energy generation tax refund fund, and notify the state  
33 treasurer, who shall make the proper entry in the records.

34 Sec. 9. The secretary of revenue is hereby authorized to adopt rules  
35 and regulations necessary to implement and administer the provisions of  
36 this act.

37 Sec. 10. This act shall take effect and be in force from and after its  
38 publication in the statute book.