Policy and Research
109 SW 9th Street
PO Box 3506
Topeka KS 66601-3506
Mark A. Burghart, Secretary

Kansas
Department of Revenue

Phone: 785-368-8222
Fax: 785-296-1279
www.ksrevenue.gov
Laura Kelly, Governor

NOTICE 22-15

KANSAS FOOD SALES TAX RATE REDUCTION

(DECEMBER 1, 2022)

During the 2022 Legislative Session House Bill 2106 was passed and signed into law. Beginning January 1, 2023, the Bill reduces the state sales and compensating use tax rate on food and food ingredients.

At present, a state sales tax is imposed on food and food ingredients at the rate of 6.5%. In addition, cities and counties impose local sales tax on food and food ingredients at various local rates.

New Section 1 of the Bill provides that, starting on January 1, 2023, the state sales tax rate on food and food ingredients will be reduced to 4.0%. Starting on January 1, 2024, the state sales tax rate will be reduced to 2.0%. And, starting on January 1, 2025, the state sales tax rate will be reduced to 0.0%.

The rates of local sales taxes, imposed by cities and counties, on food and food ingredients are not affected by the Bill. Sales of food and food ingredients remain subject to sales taxes imposed by cities and counties.

K.S.A. 79-3602 is the definitional statute for the sales tax act. Section 5 of the Bill amends the definition of "food and food ingredients" found in subsection (n), to provide:

> (n) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. *"Food and food ingredients" includes bottled water, candy, dietary supplements, food sold through vending machines and soft drinks.* "Food and food ingredients" does not include alcoholic beverages or tobacco.

New subsections (jjj), (lll), (mmm), (nnn), (ooo), and (ppp) of K.S.A. 79-3602 go on to provide the following definitions:

> *(jjj) (1) "Bottled water" means water that is placed in a safety sealed container or package for human consumption. "Bottled water" is calorie free and does not contain sweeteners or other additives, except that it may contain:*
> *(A) Antimicrobial agents;*
> *(B) fluoride;*
> *(C) carbonation;*

(D) vitamins, minerals and electrolytes;

(E) oxygen;

(F) preservatives; or

(G) only those flavors, extracts or essences derived from a spice or fruit.

(2) "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(lll) (1) "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces.

(2) "Candy" does not include any preparation containing flour and shall require no refrigeration.

(mmm) "Dietary supplement" means the same as defined in K.S.A. 79-3606(jjj), and amendments thereto.

(nnn) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

(ooo) (1) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) two or more food ingredients mixed or combined by the seller for sale as a single item; or

(C) food sold with eating utensils provided by the seller, including, but not limited to, plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(2) "Prepared food" does not include:

(A) Food that is only cut, repackaged or pasteurized by the seller; or

(B) eggs, fish, meat, poultry or foods containing these raw animal foods that require cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11 of the food and drug administration food code so as to prevent food borne illnesses.

(ppp) (1) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners.

(2) "Soft drinks" does not include beverages that contain milk or milk products, soy, rice or similar milk substitutes or beverages that are greater than 50% vegetable or fruit juice by volume.

In addition, New Section 1(b) provides the reduction in the state sales tax on food does not apply to prepared food, except in certain specified cases. The subsection provides:

(b) The provisions of this section shall not apply to prepared food unless sold without eating utensils provided by the seller and described below:

(1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries);

(2) (A) food sold in an unheated state by weight or volume as a single item; or

(B) only meat or seafood sold in an unheated state by weight or volume as a single item;

(3) bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies and tortillas; or

(4) food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption.

Under current law, K.S.A. 79-32,271 provides an income tax credit for individual income taxpayers who purchased food in Kansas, had federal adjusted gross income for the tax year that did not exceed $30,615, and meets certain other qualifications. Amendments made by Section 4 of the Bill sunset this credit at the end of tax year 2024.

For additional, and more specific information regarding application of the new law, including examples of how it will apply to real life situations, please see the Department's Publication KS-1223, Food Sales Tax Rate Reduction which is available through our website at: www.ksrevenue.gov.

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.gov. If you have questions about this Notice, please contact:

Taxpayer Assistance Center
Kansas Department of Revenue
Scott Office Building, 1st Floor
120 SE 10th Ave
P. O. Box 3506
Topeka, KS 66601-3506
Phone: 785-368-8222
Fax: 785-291-3614