

HOUSE BILL No. 2266

By Committee on Taxation

2-11

AN ACT concerning income taxation; relating to resident trusts; amend-
ing K.S.A. 79-32,109 and repealing the existing section.

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

Section 1. K.S.A. 79-32,109 is hereby amended to read as follows:
79-32,109. As used in this act, unless the context otherwise requires:

(a) Any term used in this act shall have the same meaning as when used in a comparable context in the federal internal revenue code. Any reference in this act to the "federal internal revenue code" shall mean the provisions of the federal internal revenue code of 1986, and amendments thereto, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective at any time, or from time to time, for the taxable year.

(b) "Resident individual" means a natural person who is domiciled in this state. A natural person who spends in the aggregate more than six months of the taxable year within this state shall be presumed to be a resident for purposes of this act in absence of proof to the contrary. A nonresident individual means an individual other than a resident individual.

(c) "Resident estate" means the estate of a deceased person whose domicile was in this state at the time of such person's death. "Nonresident estate" means an estate other than a resident estate.

(d) "Resident trust" means ~~a trust which is administered in this state. A trust shall not be deemed to be administered in this state solely because it is subject to the jurisdiction of a district court within this state.~~ (1) A trust created by will of a decedent who at the time of death was domiciled in Kansas; (2) a trust created by, or consisting of property of, a person domiciled in Kansas on the date the trust or portion of the trust became irrevocable; (3) a trust administered in this state; (4) a trust any of the property of which is located in this state; or (5) a trust any one of the beneficiaries of which is domiciled in this state. "Nonresident trust" means a trust other than a resident trust.

(e) "Resident partner" means a partner who is a resident individual, a resident estate, or a resident trust. "Nonresident partner" means a partner other than a resident partner.

1 (f) “Resident beneficiary” means a beneficiary of an estate or trust
2 which beneficiary is a resident individual, a resident estate, or a resident
3 trust. “Nonresident beneficiary” means a beneficiary other than a resident
4 beneficiary.

5 (g) “Director” means the director of taxation.

6 (h) “Modified Kansas source income” means that part of a nonresi-
7 dent individual’s Kansas adjusted gross income as set forth in K.S.A. 79-
8 32,117, and amendments thereto, derived from sources in Kansas. Items
9 of income including unemployment compensation, gain, loss or deduction
10 reflected in Kansas adjusted gross income shall be considered derived
11 from sources in Kansas to the extent that they are attributable to: (1) The
12 ownership of any interest in real or tangible personal property in this
13 state; (2) a business, trade, profession or occupation carried on in this
14 state; (3) a business, trade, profession or occupation carried on partly
15 within and partly without this state as determined by the uniform division
16 of income for tax purposes act as set forth in K.S.A. 79-3271 through
17 K.S.A. 79-3293, and amendments thereto; (4) the distributive share of
18 partnership income, gain, loss and deduction determined under this sec-
19 tion as if the partnership were a nonresident individual; (5) the share of
20 estate or trust income, gain, loss and deduction determined under K.S.A.
21 79-32,137, and amendments thereto; (6) prizes won from lottery games
22 conducted by the Kansas lottery; (7) any winnings from parimutuel wa-
23 gering derived from the conduct of parimutuel activities within this state;
24 or (8) income from intangible personal property, including annuities, div-
25 idends, interest, and gains from the disposition of intangible personal
26 property to the extent that such income is from property employed in a
27 trade, business, profession or occupation carried on in Kansas. A nonres-
28 ident, other than a dealer holding property primarily for sale to customers
29 in the ordinary course of such dealer’s trade or business, shall not be
30 deemed to carry on a business, trade, profession or occupation in Kansas
31 solely by reason of the purchase and sale of property for such nonresi-
32 dent’s own account.

33 “Modified Kansas source income” shall not include: (1) Compensation
34 paid by the United States for service in the armed forces of the United
35 States, performed during an induction period by an individual not dom-
36 icated in this state; or (2) such individual’s share of distributed or undi-
37 stributed taxable income or net operating loss of a corporation which is an
38 electing small business corporation unless an agreement is filed as pro-
39 vided in K.S.A. 79-32,139, and amendments thereto, in which event, the
40 “modified Kansas source income” of such nonresident individual shall
41 include such individual’s share of such corporation’s distributed and un-
42 distributed taxable income or net operating loss as such share is deter-
43 mined under the internal revenue code only to the extent, however, that

1 such income, gain or loss is at the corporate level, derived from sources
2 within Kansas.

3 Sec. 2. K.S.A. 79-32,109 is hereby repealed.

4 Sec. 3. This act shall take effect and be in force from and after its
5 publication in the statute book.

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