

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2004

HOUSE BILL No. 2882

By Committee on Taxation

2-16

12 AN ACT concerning ~~income~~ taxation; relating to ~~credit~~, **estimated tax**
13 **of individuals; credits**, commercial and industrial machinery and
14 equipment; [~~resident trust; homestead property tax;~~] amending
15 **K.S.A. 79-32,107**, **79-32,109**, **79-4508** and **79-4509**] and K.S.A.
16 2003 Supp. **79-32,101** and 79-32,206 and repealing the existing ~~sec-~~
17 ~~tion~~ **sections**.
18

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

20 **Section 1. K.S.A. 2003 Supp. 79-32,101 is hereby amended to**
21 **read as follows: 79-32,101. (a) At the time prescribed in this sec-**
22 **tion: (1) Every individual shall pay estimated tax who can reason-**
23 **ably expect to owe, after withholding and credits, tax of at least**
24 ~~\$200~~ **\$500** [**\$600**] **and who expects their withholding and credits to**
25 **be less than (A) 90% of the tax shown on the return for the current**
26 **year or (B) 100% of the tax shown for the preceding tax year; and**
27 **(2) every corporation shall pay estimated tax if its Kansas in-**
28 **come tax liability can reasonably be expected to exceed \$500.**
29 **(b) In the case of a husband and wife, single payments under**
30 **this section may be made by them jointly. If a joint payment is**
31 **made, but a joint return is not made for the taxable year, the es-**
32 **timated tax for such year may be divided between them. Notifi-**
33 **cation of the division of such payments shall be made at such time**
34 **and in such manner as the director of taxation may provide, on**
35 **forms issued by the director of taxation.**

36 **(c) If on or before January 31, or March 1, in the case of an**
37 **individual referred to in subsection (b) of K.S.A. 79-32,102, and**
38 **amendments thereto relating to income from farming or fishing, of**
39 **the succeeding year, the taxpayer files a return for the taxable**
40 **year, and pays in full the amount of tax computed on the return,**
41 **then, under rules and regulations of the secretary of revenue no**
42 **payment otherwise required to be made under this section on Jan-**
43 **uary 15, or at any time during the preceding year, in the case of**

1 **an individual referred to in subsection (b) of K.S.A. 79-32,102, and**
2 ***amendments thereto* relating to income from farming or fishing, is**
3 **required to be made.**

4 **(d) An individual or corporation with a taxable year of less than**
5 **12 months shall make a declaration for less than 12 months as**
6 **prescribed by rules and regulations of the secretary of revenue.**

7 **(e) The provisions of this section shall not apply to an estate or**
8 **trust.**

9 **Sec. 2. K.S.A. 79-32,107 is hereby amended to read as follows:**
10 **79-32,107. (a) All penalties and interest prescribed by K.S.A. 79-**
11 **3228, and amendments thereto, for noncompliance with the in-**
12 **come tax laws of Kansas shall be applicable for noncompliance with**
13 **the provisions of the Kansas withholding and declaration of esti-**
14 **imated tax act relating to withholding tax which shall be enforced**
15 **in the same manner as the Kansas income tax act. A penalty at the**
16 **same rate per annum prescribed by subsection (b) of K.S.A. 79-**
17 **2968, and amendments thereto, for interest upon delinquent or**
18 **unpaid taxes shall be applied and added to a taxpayer's amount of**
19 **underpayment of estimated tax due from the date the estimated**
20 **tax payment was due until the same is paid or until the 15th day**
21 **of the fourth month following the close of the taxable year for**
22 **which such estimated tax is a credit, whichever date is earlier, but**
23 **such penalty shall not be added if the total amount thereof does**
24 **not exceed \$1. For purposes of this subsection, the amount of un-**
25 **derpayment of estimated tax shall be the excess of the amount of**
26 **the installment which would be required to be paid if the estimated**
27 **tax were equal to 90% of the tax shown on the return for the tax-**
28 **able year or, if no return was filed, 90% of the tax for such year,**
29 **over the amount, if any, of the installment paid on or before the**
30 **last date prescribed for payment. Amounts due from any employer**
31 **on account of withholding or from any taxpayer for estimated tax**
32 **may be collected by the director in the manner provided for the**
33 **collection of state income tax in K.S.A. 79-3235, and amendments**
34 **thereto. For purposes of this subsection, "underpayment of tax"**
35 **means the difference between the amount of tax actually paid and**
36 **the amount of tax which would have been required to be paid to**
37 **avoid penalty pursuant to subsection (b) or (c).**

38 **(b) No penalty or interest shall be imposed upon any individual**
39 **with respect to any underpayment of any installment if the total**
40 **amount of all payments of estimated tax made on or before the**
41 **last date prescribed for the payment of such installment equals or**
42 **exceeds the amount which would have been required to be paid**
43 **on or before such date if the estimated tax were whichever of the**

1 following is the least:

2 (1) The tax shown on the return of the individual for the pre-
3 ceding taxable year, if a return showing a liability for tax was filed
4 by the individual for the preceding taxable year;

5 (2) zero if no return was required to be filed or if the tax li-
6 bility on the individual's return was less than \$200 for the preced-
7 ing taxable year;

8 (3) an amount equal to 66 $\frac{2}{3}$ %, in the case of individuals re-
9 ferred to in subsection (b) of K.S.A. 79-32,102, and amendments
10 thereto, and 90%, in the case of all other individuals, of the tax for
11 the taxable year computed by placing on an annualized basis, pur-
12 suant to rules and regulations adopted by the secretary of revenue,
13 the taxable income for the months in the taxable year ending be-
14 fore the month in which the installment is required to be made.

15 (c) No penalty or interest shall be imposed upon any corpora-
16 tion with respect to any underpayment of any installment of esti-
17 mated tax if the total amount of all payments of estimated tax made
18 on or before the last date prescribed for the payment of such in-
19 stallment equals or exceeds the amount which would have been
20 required to be paid on or before such date if the estimated tax
21 were whichever of the following is the least:

22 (1) The tax shown on the return of the corporation for the pre-
23 ceding taxable year, if a return showing a liability for tax was filed
24 by the corporation for the preceding taxable year, or zero if no
25 return was required to be filed, or if the tax liability on the cor-
26 poration's return was less than \$500 for the preceding taxable
27 year; or

28 (2) (A) an amount equal to 90% of the tax for the taxable year
29 computed by placing on an annualized basis the taxable income:
30 (i) For the first three months of the taxable year, in the case of the
31 installment required to be paid in the fourth month; (ii) for the
32 first three months or for the first five months of the taxable year,
33 in the case of the installment required to be paid in the sixth
34 month; (iii) for the first six months or for the first eight months of
35 the taxable year in the case of the installment required to be paid
36 in the ninth month; and (iv) for the first nine months or for the
37 first 11 months of the taxable year, in the case of the installment
38 required to be paid in the 12th month of the taxable year.

39 (B) For purposes of this subsection (2), the taxable income shall
40 be placed on an annualized basis by (i) multiplying by 12 the tax-
41 able income referred to in subsection (2)(A), and (ii) dividing the
42 resulting amount by the number of months in the taxable year
43 (three, five, six, eight, nine, or 11, as the case may be) referred to

1 in subsection (2)(A).

2 (d) If the employer, in violation of the provisions of this act,
3 fails to deduct and withhold under this chapter, and thereafter the
4 tax against which such withholding may be credited is paid, the
5 amount otherwise required to be deducted and withheld shall not
6 be collected from the employer; but this subsection shall in no case
7 relieve the employer from liability for any penalties or additions
8 to the tax otherwise applicable in respect of such failure to deduct
9 and withhold.

10 (e) Any person required to collect, truthfully account for, and
11 pay over any tax imposed by this act, who willfully fails to collect
12 such tax, or truthfully account for and pay over such tax, or willfully
13 attempts in any manner to evade or defeat any such tax or the
14 payment thereof, shall in addition to the other penalties of this
15 section be liable to a penalty equal to the total amount of the tax
16 evaded, or not collected, or not accounted for and paid over.

17 (f) In case of failure by any employer required by subsection
18 (b) of K.S.A. 79-3298, and amendments thereto, to remit any
19 amount of withheld taxes by the date prescribed therefor, unless
20 it is shown that such failure is due to reasonable cause and not due
21 to willful neglect, there shall be imposed upon such person a pen-
22 alty of 15% of the amount of the underpayment. For purposes of
23 this subsection, the term “underpayment” means the excess of the
24 amount of the tax required to be withheld and remitted over the
25 amount, if any, remitted on or before the date prescribed therefor.
26 The failure to remit for any withholding period shall be deemed
27 not to continue beyond the last date prescribed for filing the an-
28 nual return as required by subsection (d) of K.S.A. 79-3298, and
29 amendments thereto. Penalty and interest as prescribed by K.S.A.
30 79-3228, and amendments thereto, shall not begin to accrue under
31 subsection (a) of this section on the amount of any such underpay-
32 ment until the due date of the annual return for the calendar year
33 in which such failure to remit occurs.

34 (g) Whenever the secretary or the secretary’s designee deter-
35 mines that the failure of the taxpayer to comply with the provisions
36 of subsections (a), (e), or (f) of this section was due to reasonable
37 causes, the secretary or the secretary’s designee may waive or re-
38 duce any of ~~said~~ such penalties and may reduce the interest rate to
39 the underpayment rate prescribed and determined for the appli-
40 cable period under section 6621 of the federal internal revenue
41 code as in effect on January 1, 1994, upon making a record of the
42 reasons therefor.

43 (h) For tax year 2004 and tax years thereafter, no penalty for a tax

1 *year shall be imposed upon any individual with respect to any underpay-*
2 *ment of estimated tax, if such individual has a federal income tax liability,*
3 *net of federal withholding, estimated tax payments, credits and other pay-*
4 *ments, equal to or less than zero for that same tax year.*

5 Section ~~±~~ **3.** K.S.A. 2003 Supp. 79-32,206 is hereby amended to read
6 as follows: 79-32,206. For all taxable years commencing after December
7 31, 2001, there shall be allowed as a credit against the tax liability of a
8 taxpayer imposed under the Kansas income tax act, the premiums tax
9 upon insurance companies imposed pursuant to K.S.A. 40-252, and
10 amendments thereto, and the privilege tax as measured by net income of
11 financial institutions imposed pursuant to article 11 of chapter 79 of the
12 Kansas Statutes Annotated, an amount equal to 15% of the property tax
13 levied for property tax years 2002, 2003 and 2004, 20% of the property
14 tax levied for property tax years 2005 and 2006, and 25% of the property
15 tax levied for property tax year 2007, and all such years thereafter, actually
16 and timely paid during an income or privilege taxable year upon com-
17 mercial and industrial machinery and equipment classified for property
18 taxation purposes pursuant to section 1 of article 11 of the Kansas con-
19 stitution in subclass (5) or (6) of class 2, machinery and equipment clas-
20 sified for such purposes in subclass (2) of class 2. For all taxable years
21 commencing after December 31, 2004, there shall be allowed as a credit
22 against the tax liability of a taxpayer imposed under the Kansas income
23 tax act an amount equal to 20% of the property tax levied for property
24 tax years 2005 and 2006, and 25% of the property tax levied for property
25 tax year 2007 and all such years thereafter, actually and timely paid during
26 an income taxable year upon railroad machinery and equipment classified
27 for property tax purposes pursuant to section 1 of article 11 of the Kansas
28 constitution in subclass (3) of class 2. ~~Prior to the 2004 legislative session,~~
29 ~~the joint committee on economic development shall conduct a study of~~
30 ~~the economic impact of the foregoing provision.~~ If the amount of such
31 tax credit exceeds the taxpayer's income tax liability for the taxable year,
32 the amount thereof which exceeds such tax liability shall be refunded to
33 the taxpayer. If the taxpayer is a corporation having an election in effect
34 under subchapter S of the federal internal revenue code, a partnership
35 or a limited liability company, the credit provided by this section shall be
36 claimed by the shareholders of such corporation, the partners of such
37 partnership or the members of such limited liability company in the same
38 manner as such shareholders, partners or members account for their pro-
39 portionate shares of the income or loss of the corporation, partnership or
40 limited liability company. *The secretary of revenue shall adopt rules and*
41 *regulations regarding the filing of documents that support the amount of*
42 *credit claimed pursuant to this section.*

43 **[Sec. 4. K.S.A. 79-32,109 is hereby amended to read as follows:**

1 **79-32,109. As used in this act, unless the context otherwise**
2 **requires:**

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

11 [(b) “Resident individual” means a natural person who is dom-
12 iled in this state. A natural person who spends in the aggregate
13 more than six months of the taxable year within this state shall be
14 presumed to be a resident for purposes of this act in absence of
15 proof to the contrary. A nonresident individual means an individ-
16 ual other than a resident individual.

17 [(c) “Resident estate” means the estate of a deceased person
18 whose domicile was in this state at the time of such person’s death.
19 “Nonresident estate” means an estate other than a resident estate.

20 [(d) “Resident trust” means a trust which is administered in this
21 state. A trust shall not be deemed to be administered in this state solely
22 because it is subject to the jurisdiction of a district court within this state:

23 *(1) A trust created by will of a decedent who at the time of death was*
24 *domiciled in Kansas, and such trust has at least one income beneficiary*
25 *who, on the last day of the taxable year, was a resident of Kansas; (2) a*
26 *trust created by, or consisting of property of, a person domiciled in Kansas*
27 *on the date the trust or portion of the trust became irrevocable, and such*
28 *trust has at least one income beneficiary who, on the last day of the taxable*
29 *year, was a resident of Kansas; or (3) a trust administered in this state.*

30 “Nonresident trust” means a trust other than a resident trust.

31 [(e) “Resident partner” means a partner who is a resident in-
32 dividual, a resident estate, or a resident trust. “Nonresident part-
33 ner” means a partner other than a resident partner.

34 [(f) “Resident beneficiary” means a beneficiary of an estate or
35 trust which beneficiary is a resident individual, a resident estate,
36 or a resident trust. “Nonresident beneficiary” means a beneficiary
37 other than a resident beneficiary.

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

39 [(h) “Modified Kansas source income” means that part of a
40 nonresident individual’s Kansas adjusted gross income as set forth
41 in K.S.A. 79-32,117, and amendments thereto, derived from
42 sources in Kansas. Items of income including unemployment com-
43 pensation, gain, loss or deduction reflected in Kansas adjusted

1 gross income shall be considered derived from sources in Kansas
2 to the extent that they are attributable to: (1) The ownership of
3 any interest in real or tangible personal property in this state; (2)
4 a business, trade, profession or occupation carried on in this state;
5 (3) a business, trade, profession or occupation carried on partly
6 within and partly without this state as determined by the uniform
7 division of income for tax purposes act as set forth in K.S.A. 79-
8 3271 through K.S.A. 79-3293, and amendments thereto; (4) the
9 distributive share of partnership income, gain, loss and deduction
10 determined under this section as if the partnership were a non-
11 resident individual; (5) the share of estate or trust income, gain,
12 loss and deduction determined under K.S.A. 79-32,137, and
13 amendments thereto; (6) prizes won from lottery games conducted
14 by the Kansas lottery; (7) any winnings from parimutuel wagering
15 derived from the conduct of parimutuel activities within this state;
16 or (8) income from intangible personal property, including annu-
17 ities, dividends, interest, and gains from the disposition of intan-
18 gible personal property to the extent that such income is from
19 property employed in a trade, business, profession or occupation
20 carried on in Kansas. A nonresident, other than a dealer holding
21 property primarily for sale to customers in the ordinary course of
22 such dealer's trade or business, shall not be deemed to carry on a
23 business, trade, profession or occupation in Kansas solely by rea-
24 son of the purchase and sale of property for such nonresident's
25 own account.

26 ["Modified Kansas source income" shall not include: (1) Com-
27 pensation paid by the United States for service in the armed forces
28 of the United States, performed during an induction period by an
29 individual not domiciled in this state; or (2) such individual's share
30 of distributed or undistributed taxable income or net operating
31 loss of a corporation which is an electing small business corpora-
32 tion unless an agreement is filed as provided in K.S.A. 79-32,139,
33 and amendments thereto, in which event, the "modified Kansas
34 source income" of such nonresident individual shall include such
35 individual's share of such corporation's distributed and undistri-
36 buted taxable income or net operating loss as such share is deter-
37 mined under the internal revenue code only to the extent, how-
38 ever, that such income, gain or loss is at the corporate level,
39 derived from sources within Kansas.

40 [Sec. 5. K.S.A. 79-4508 is hereby amended to read as follows:
41 79-4508. The amount of any claim pursuant to this act shall be
42 computed by deducting the amount computed under column (2)
43 from the amount of claimant's property tax accrued and/or rent

1	constituting property tax accrued.		
2	[(1)		(2)
3	[Claimants household		Deduction from property tax
4			accrued
5	[income		and/or rent constituting
6	[At least	But not more than	property tax accrued
7			
8	[\$0	\$3,000	\$0
9	[3,001	4,000	12%
10	[4,001	25,000	12% plus 4% of every \$1,000,
11			or fraction thereof, of
12			income in excess of \$4,001
13	[\$0	\$6,000	\$0
14	[6,001	7,000	10%
15	[7,001	17,000	10% plus 4% of every \$1,000,
16			or fraction thereof, of
17			income in excess of \$7,000
18			but less than or equal to
19			\$17,000
20	[17,001	25,000	50% plus 5% of every \$1,000,
21			or fraction thereof, of
22			income in excess of \$17,000
23			but less than or equal to
24			\$25,000
25	[25,001	26,300	95%

26 [The director of taxation shall prepare a table under which
 27 claims under this act shall be determined. The amount of claim for
 28 each bracket shall be computed only to the nearest \$1.

29 [The claimant may elect not to record the amount claimed on
 30 the claim. The claim allowable to persons making this election shall
 31 be computed by the department which shall notify the claimant by
 32 mail of the amount of the allowable claim.

33 [Sec. 6. K.S.A. 79-4509 is hereby amended to read as follows:
 34 **79-4509. In the event property taxes accrued, rent constituting**
 35 **property taxes accrued or their sum exceeds \$600 \$720 for a house-**
 36 **hold in any one year, the amount thereof shall, for purposes of this**
 37 **act, be deemed to have been \$600 \$720.]**

38 Sec. ~~4~~ [7]. K.S.A. 79-32,107[, 79-32,109, 79-4508 and 79-
 39 4509] and K.S.A. 2003 Supp. 79-32,101 and 79-32,206 ~~is~~ are hereby
 40 repealed.

41 Sec. ~~5~~ [8]. This act shall take effect and be in force from and after
 42 its publication in the statute book.