

## HOUSE BILL No. 2259

By Committee on Taxation

2-2

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9 AN ACT concerning franchise tax; relating to rate; elimination; amending  
10 K.S.A. 2004 Supp. 79-5401 and repealing the existing section.

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

13 Section 1. K.S.A. 2004 Supp. 79-5401 is hereby amended to read as  
14 follows: 79-5401. (a) (1) *Subject to the limitations provided in subsection*  
15 *(g), for any foreign or domestic for profit corporation, or professional*  
16 *corporation or association, duly registered and authorized to do business*  
17 *in Kansas by the secretary of state and which has taxable equity attrib-*  
18 *utable to Kansas of \$100,000 or more, such entity shall pay an annual*  
19 *franchise tax to the secretary of revenue for the tax year commencing*  
20 *after December 31, 2003, at the rate of .125%, for the tax year com-*  
21 *mencing after December 31, 2004, at the rate of .125%, for the tax year*  
22 *commencing after December 31, 2005, at the rate of .083% and for the*  
23 *tax year commencing after December 31, 2006, at the rate of .041%, of*  
24 *such entity's taxable equity attributable to Kansas, except that such annual*  
25 *franchise tax for any such entity shall not exceed \$20,000.*

26 (2) *Subject to the limitations provided in subsection (g), for any for-*  
27 *foreign or domestic limited liability company, foreign or domestic limited*  
28 *partnership or foreign or domestic limited liability partnership duly reg-*  
29 *istered and authorized to do business in Kansas by the secretary of state*  
30 *and which has net capital accounts located or used in this state at the end*  
31 *of the preceding taxable year as required to be reported on the federal*  
32 *partnership return of income of \$100,000 or more, such entity shall pay*  
33 *an annual franchise tax to the secretary of revenue for the tax year com-*  
34 *mencing after December 31, 2003, at the rate of .125%, for the tax year*  
35 *commencing after December 31, 2004, at the rate of .125%, for the tax*  
36 *year commencing after December 31, 2005, at the rate of .083% and for*  
37 *the tax year commencing after December 31, 2006, at the rate of .041%,*  
38 *of the net capital accounts located in or used in this state at the end of*  
39 *the preceding taxable year as required to be reported on the federal*  
40 *partnership return of income, or for a one-member LLC taxed as a sole*  
41 *proprietorship which has net book value of the LLC as calculated on an*  
42 *income tax basis located in or used in this state at the end of the preceding*  
43 *taxable year of \$100,000 or more, for the tax year commencing after De-*

1 *ember 31, 2003, at the rate of .125% , for the tax year commencing after*  
2 *December 31, 2004, at the rate of .125%, for the tax year commencing*  
3 *after December 31, 2005, at the rate of .083% and for the tax year com-*  
4 *mencing after December 31, 2006, at the rate of .041%, of net book value*  
5 *of the LLC as calculated on an income tax basis located in or used in this*  
6 *state at the end of the preceding taxable year, except that such annual*  
7 *franchise tax for any such entity shall not exceed \$20,000.*

8 (3) *Subject to the limitations provided in subsection (g), for any busi-*  
9 *ness trust duly registered and authorized to do business in Kansas by the*  
10 *secretary of state which has corpus as shown on its balance sheet at the*  
11 *end of the preceding taxable year as required to be reported to the sec-*  
12 *retary of revenue of \$100,000 or more, such entity shall pay an annual*  
13 *franchise tax to the secretary of revenue for the tax year commencing*  
14 *after December 31, 2003, at the rate of .125%, for the tax year com-*  
15 *mencing after December 31, 2004, at the rate of .125%, for the tax year*  
16 *commencing after December 31, 2005, at the rate of .083% and for the*  
17 *tax year commencing after December 31, 2006, at the rate of .041%, of*  
18 *the corpus as shown on its balance sheet at the end of the preceding*  
19 *taxable year as required to be reported to the secretary of revenue or in*  
20 *the case of a foreign business trust which has a corpus which is located*  
21 *in or which it uses or intends to use in this state as shown on its balance*  
22 *sheet at the end of the preceding taxable year as required to be reported*  
23 *to the secretary of revenue of \$100,000 or more, for the tax year com-*  
24 *mencing after December 31, 2003, at the rate of .125%, for the tax year*  
25 *commencing after December 31, 2004, at the rate of .125%, for the tax*  
26 *year commencing after December 31, 2005, at the rate of .083% and for*  
27 *the tax year commencing after December 31, 2006, at the rate of .041%,*  
28 *of that portion of the corpus which is located in or which it uses or intends*  
29 *to use in this state as shown on its balance sheet at the end of the pre-*  
30 *ceding taxable year as required to be reported to the secretary of revenue,*  
31 *except that the annual franchise tax for any such entity shall not exceed*  
32 *\$20,000. Such balance sheet shall be as of the end of the tax period,*  
33 *certified by the trustee, fairly and truly reflecting the trust assets and*  
34 *liabilities and specifically setting out its corpus, and, in the case of a for-*  
35 *ign business trust, fairly and truly reflecting an allocation of its moneys*  
36 *and other assets as between those located, used or to be used, in this*  
37 *state and those located, used or to be used elsewhere.*

38 (b) (1) Every corporation or association, business trust, limited lia-  
39 bility company, limited partnership or limited liability partnership subject  
40 to taxation under this act, regardless of whether such entity has a franchise  
41 tax liability, shall make a return, stating specifically such information as  
42 may be required by the forms, rules and regulations of the secretary of  
43 revenue, which return shall include a balance sheet listing all assets and

1 liabilities as of the end of the tax year, as reported in the federal income  
2 tax return on form 1120 or, if no such federal return is required to be  
3 filed, such balance sheet information as otherwise required by the sec-  
4 retary, and such further information showing the allocation or apportion-  
5 ment calculations in computing the amount of the franchise tax. The  
6 return of a corporation or association shall be signed by the president,  
7 vice-president, treasurer, assistant treasurer, chief accounting officer or  
8 any other officer so authorized to act. The fact that an individual's name  
9 is signed on a return shall be *prima facie* evidence that such individual is  
10 authorized to sign such return on behalf of such corporation. In cases  
11 where receivers, trustees in bankruptcy or assignees are operating the  
12 property or business of corporations, such receivers, trustees, or assignees  
13 shall make returns for such corporations in the same manner and form  
14 as corporations are required to make returns. Any tax due on the basis of  
15 such returns shall be collected in the same manner as if collected from  
16 the corporation for which the return is made. The returns of a limited  
17 liability partnership shall be signed by a partner of the limited liability  
18 partnership. The returns of a limited liability company shall be signed by  
19 a member of the limited liability company.

20 (2) All returns shall be filed in the office of the director of taxation  
21 on or before the 15th day of the fourth month following the close of the  
22 taxable year, except as provided in subsection (b) (3).

23 (3) The director of taxation may grant a reasonable extension of time  
24 for filing returns in accordance with rules and regulations of the secretary  
25 of revenue. Whenever any such extension of time to file is requested by  
26 a taxpayer and granted by the director, no penalty authorized by K.S.A.  
27 79-3228, and amendments thereto, shall be imposed if 90% of the liability  
28 is paid on or before the original due date.

29 (c) (1) All taxes imposed under the provisions of the Kansas franchise  
30 tax act shall be paid on the 15th day of the fourth month following the  
31 close of the taxable year. When the tax as shown to be due on a return is  
32 less than \$5, such tax shall be canceled and no payment need be remitted  
33 by the taxpayer.

34 (2) The director of taxation may extend the time for payment of the  
35 tax, or any installment thereof, for a reasonable period of time not to  
36 exceed six months from the date fixed for payment thereof. Such exten-  
37 sion may exceed six months in the case of a taxpayer who is abroad.  
38 Interest shall be charged at the rate prescribed by K.S.A. 79-2968, and  
39 amendments thereto, for the period of such extension.

40 (d) The provisions of K.S.A. 79-3226, 79-3228, 79-3228a, 79-3229,  
41 79-3230, 79-3233, 79-3233a, 79-3233b, 79-3233g, 79-3233h, 79-3233i,  
42 79-3234, 79-3235 and 79-3236, and amendments thereto, shall apply to  
43 the administration and enforcement of this section.

1 (e) All taxes paid pursuant to the provisions of this act shall be  
2 rounded off to the nearest \$1, and unless other disposition is specifically  
3 provided by law, the taxes collected under the provisions of this act and  
4 all overpayments which may not be refunded under this section shall be  
5 remitted to the state treasurer in accordance with the provisions of K.S.A.  
6 75-4215, and amendments thereto. Upon receipt of each such remittance,  
7 the state treasurer shall deposit the entire amount in the state treasury  
8 to the credit of the state general fund. The secretary of revenue shall not  
9 refund any overpayment of franchise taxes which is equal to \$5 or less,  
10 shall not credit any domestic corporation or foreign corporation, associ-  
11 ation, business trust, limited liability company, limited partnership or lim-  
12 ited liability partnership with any amount which may not be refunded  
13 under this section, and shall not require reimbursement for any under-  
14 payment of franchise taxes which is less than \$5. Franchise tax refunds  
15 shall be paid to the claimant from the income tax refund fund upon war-  
16 rants of the director of accounts and reports pursuant to vouchers ap-  
17 proved by the director of taxation, but no warrant issued hereunder shall  
18 be drawn in an amount less than \$5. No interest shall be allowed on any  
19 payment made to a claimant pursuant to this act.

20 (f) As used in this section: (1) “Act” means the Kansas franchise tax  
21 act;

22 (2) “net book value as calculated on an income tax basis located in or  
23 used in this state” means the net book value of a limited liability company  
24 multiplied by a percentage which is the average of the following three  
25 percentages: (A) The average value of the limited liability company’s real  
26 and tangible personal property owned or rented and used in this state  
27 during the next preceding tax period divided by the average total value  
28 of the limited liability company’s real and tangible personal property  
29 owned or rented and used during the next preceding tax period; (B) the  
30 total amount of compensation paid by the limited liability company in this  
31 state during the next preceding tax period divided by the total amount of  
32 compensation paid everywhere by the limited liability company during  
33 the next preceding tax period; and (C) the total sales of the limited liability  
34 company in this state during the next preceding tax period divided by the  
35 total sales of the limited liability company everywhere during the next  
36 preceding tax period. If a limited liability company has no real and tan-  
37 gible property owned or rented and used, compensation paid or sales  
38 made for the preceding tax period, then the average percentage shall be  
39 determined by using only those percentages for property, compensation  
40 and sales which reflect property or activity;

41 (3) “net capital accounts located in or used in this state” means the  
42 net capital accounts of a limited partnership or limited liability partner-  
43 ship as stated on the federal income tax return multiplied by a percentage

1 which is the average of the following three percentages: (A) The average  
2 value of such entity's real and tangible personal property owned or rented  
3 and used in this state during the next preceding tax period divided by the  
4 average total value of such entity's real and tangible personal property  
5 owned or rented and used during the next preceding tax period; (B) the  
6 total amount of compensation paid by such entity in this state during the  
7 next preceding tax period divided by the total amount of compensation  
8 paid everywhere by such entity during the next preceding tax period; and  
9 (C) the total sales of such entity in this state during the next preceding  
10 tax period divided by the total sales of such entity everywhere during the  
11 next preceding tax period. If such entity has no real and tangible personal  
12 property owned or rented and used, compensation paid or sales made for  
13 the preceding tax period, then the average percentage shall be deter-  
14 mined by using only those percentages for property, compensation and  
15 sales which reflect property or activity;

16 (4) "shareholder's equity" means the sum of: (1) Paid-in capital stock,  
17 except that paid-in capital stock shall not include any capital stock issued  
18 by a corporation and reacquired by such corporation through gift, pur-  
19 chase or otherwise and available for resale or retirement; (2) capital paid  
20 in, in excess of par; and (3) retained earnings, all as stated on such cor-  
21 poration's federal income tax return;

22 (5) "shareholder's equity attributable to Kansas" means the share-  
23 holder's equity of a corporation multiplied by a percentage which is the  
24 average of the following three percentages: (A) The average value of the  
25 corporation's real and tangible personal property owned or rented and  
26 used in this state during the next preceding tax period divided by the  
27 average total value of the corporation's real and tangible personal property  
28 owned or rented and used during the next preceding tax period; (B) the  
29 total amount of compensation paid by the corporation in this state during  
30 the next preceding tax period divided by the total amount of compensa-  
31 tion paid everywhere by the corporation during the next preceding tax  
32 period; and (C) the total sales of the corporation in this state during the  
33 next preceding tax period divided by the total sales of the corporation  
34 everywhere during the next preceding tax period. If a corporation has no  
35 real and tangible personal property owned or rented and used, compen-  
36 sation paid or sales made for the preceding tax period, then the average  
37 percentage shall be determined by using only those percentages for prop-  
38 erty, compensation and sales which reflect property or activity; and

39 (6) "taxable equity attributable to Kansas" means shareholder's equity  
40 attributable to Kansas.

41 (g) The provisions of this section shall apply to ~~all tax years~~ *the tax*  
42 *year commencing after December 31, 2003, to the tax year commencing*  
43 *after December 31, 2004, to the tax year commencing after December 31,*

1 *2005 and to the tax year commencing after December 31, 2006, but shall*  
2 *not apply to any tax year commencing after December 31, 2006.*  
3 (h) The provisions of this section shall be known and may be cited as  
4 the Kansas franchise tax act.  
5 Sec. 2. K.S.A. 2004 Supp. 79-5401 is hereby repealed.  
6 Sec. 3. This act shall take effect and be in force from and after its  
7 publication in the statute book.