

HOUSE Substitute for Substitute for SENATE BILL No. 215

AN ACT concerning taxation; relating to franchise tax, threshold; amending K.S.A. 2006 Supp. 79-5401, as amended by section 1 of 2007 House Bill No. 2264, and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 79-5401, as amended by section 1 of 2007 House Bill No. 2264, is hereby amended to read as follows: 79-5401.

(a) (1) Subject to the limitations provided in subsection (g), for any foreign or domestic for profit corporation, or professional corporation or association, duly registered and authorized to do business in Kansas by the secretary of state and which has taxable equity attributable to Kansas *for the tax year commencing after December 31, 2005, of \$100,000 or more, and for tax years commencing after December 31, 2006, through December 31, 2009, of \$1,000,000 or more*, such entity shall pay an annual franchise tax to the secretary of revenue for tax years commencing after December 31, 2005, and December 31, 2006, at the rate of .125%, for the tax year commencing after December 31, 2007, at the rate of .09375%, for the tax year commencing after December 31, 2008, at the rate of .0625%, and for the tax year commencing after December 31, 2009, at the rate of .03125%, of such entity's taxable equity attributable to Kansas, except that such annual franchise tax for any such entity shall not exceed \$20,000.

(2) Subject to the limitations provided in subsection (g), for any foreign or domestic limited liability company, foreign or domestic limited partnership or foreign or domestic limited liability partnership duly registered and authorized to do business in Kansas by the secretary of state and which has net capital accounts located in or used in this state at the end of the taxable year as required to be reported on the federal partnership return of income *for the tax year commencing after December 31, 2005, of \$100,000 or more, and for tax years commencing after December 31, 2006, through December 31, 2009, of \$1,000,000 or more*, such entity shall pay an annual franchise tax to the secretary of revenue for tax years commencing after December 31, 2005, and December 31, 2006, at the rate of .125%, for the tax year commencing after December 31, 2007, at the rate of .09375%, for the tax year commencing after December 31, 2008, at the rate of .0625%, and for the tax year commencing after December 31, 2009, at the rate of .03125%, of the net capital accounts located in or used in this state at the end of the taxable year as required to be reported on the federal partnership return of income, or for a one-member LLC taxed as a sole proprietorship which has net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the taxable year *for the tax year commencing after December 31, 2005, of \$100,000 or more, and for tax years commencing after December 31, 2006, through December 31, 2009, of \$1,000,000 or more*, for tax years commencing after December 31, 2005, and December 31, 2006, at the rate of .125%, for the tax year commencing after December 31, 2007, at the rate of .09375%, for the tax year commencing after December 31, 2008, at the rate of .0625%, and for the tax year commencing after December 31, 2009, at the rate of .03125%, of net book value of the LLC as calculated on an income tax basis located in or used in this state at the end of the taxable year, except that such annual franchise tax for any such entity shall not exceed \$20,000.

(3) Subject to the limitations provided in subsection (g), for any business trust duly registered and authorized to do business in Kansas by the secretary of state and which has corpus as shown on its balance sheet at the end of the taxable year as required to be reported to the secretary of revenue *for the tax year commencing after December 31, 2005, of \$100,000 or more, and for tax years commencing after December 31, 2006, through December 31, 2009, of \$1,000,000 or more*, such entity shall pay an annual franchise tax to the secretary of revenue for tax years commencing after December 31, 2005, and December 31, 2006, at the rate of .125%, for the tax year commencing after December 31, 2007, at the rate of .09375%, for the tax year commencing after December 31, 2008, at the rate of .0625%, and for the tax year commencing after December 31, 2009, at the rate of .03125%, of the corpus as shown on its balance sheet at the end of the taxable year as required to be reported to the secretary of revenue or in the case of a foreign business trust which has a corpus which is located in or which it uses or intends to use in this state as shown on its balance sheet at the end of the taxable year as required

to be reported to the secretary of revenue for the tax year commencing after December 31, 2005, of \$100,000 or more, and for tax years commencing after December 31, 2006, through December 31, 2009, of \$1,000,000 or more, for tax years commencing after December 31, 2005, and December 31, 2006, at the rate of .125%, for the tax year commencing after December 31, 2007, at the rate of .09375%, for the tax year commencing after December 31, 2008, at the rate of .0625%, and for the tax year commencing after December 31, 2009, at the rate of .03125%, of that portion of the corpus which is located in or which it uses or intends to use in this state as shown on its balance sheet at the end of the taxable year as required to be reported to the secretary of revenue, except that the annual franchise tax for any such entity shall not exceed \$20,000. Such balance sheet shall be as of the end of the tax period, certified by the trustee, fairly and truly reflecting the trust assets and liabilities and specifically setting out its corpus, and, in the case of a foreign business trust, fairly and truly reflecting an allocation of its moneys and other assets as between those located, used or to be used, in this state and those located, used or to be used elsewhere.

(b) (1) Every corporation or association, business trust, limited liability company, limited partnership or limited liability partnership subject to taxation under this act, regardless of whether such entity has a franchise tax liability, shall make a return, stating specifically such information as may be required by the forms, rules and regulations of the secretary of revenue, which return shall include a balance sheet listing all assets and liabilities as of the end of the tax year, as reported in the federal income tax return on form 1120 or, if no such federal return is required to be filed, such balance sheet information as otherwise required by the secretary, and such further information showing the allocation or apportionment calculations in computing the amount of the franchise tax. The return of a corporation or association shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer so authorized to act. The fact that an individual's name is signed on a return shall be *prima facie* evidence that such individual is authorized to sign such return on behalf of such corporation. In cases where receivers, trustees in bankruptcy or assignees are operating the property or business of corporations, such receivers, trustees, or assignees shall make returns for such corporations in the same manner and form as corporations are required to make returns. Any tax due on the basis of such returns shall be collected in the same manner as if collected from the corporation for which the return is made. The returns of a limited liability partnership shall be signed by a partner of the limited liability partnership. The returns of a limited liability company shall be signed by a member of the limited liability company.

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

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

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

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

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

(e) All taxes paid pursuant to the provisions of this act shall be

rounded off to the nearest \$1, and unless other disposition is specifically provided by law, the taxes collected under the provisions of this act and all overpayments which may not be refunded under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund. The secretary of revenue shall not refund any overpayment of franchise taxes which is equal to \$5 or less, shall not credit any domestic corporation or foreign corporation, association, business trust, limited liability company, limited partnership or limited liability partnership with any amount which may not be refunded under this section, and shall not require reimbursement for any underpayment of franchise taxes which is less than \$5. Franchise tax refunds shall be paid to the claimant from the income tax refund fund upon warrants of the director of accounts and reports pursuant to vouchers approved by the director of taxation, but no warrant issued hereunder shall be drawn in an amount less than \$5. No interest shall be allowed on any payment made to a claimant pursuant to this act.

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

(2) “net book value as calculated on an income tax basis located in or used in this state” means the net book value of a limited liability company multiplied by a percentage which is the average of the following three percentages: (A) The average value of the limited liability company’s real and tangible personal property owned or rented and used in this state during the tax period divided by the average total value of the limited liability company’s real and tangible personal property owned or rented and used during the tax period; (B) the total amount of compensation paid by the limited liability company in this state during the tax period divided by the total amount of compensation paid everywhere by the limited liability company during the tax period; and (C) the total sales of the limited liability company in this state during the tax period divided by the total sales of the limited liability company everywhere during the tax period. If a limited liability company has no real and tangible property owned or rented and used, compensation paid or sales made for the tax period, then the average percentage shall be determined by using only those percentages for property, compensation and sales which reflect property or activity;

(3) “net capital accounts located in or used in this state” means the net capital accounts of a limited partnership or limited liability partnership as stated on the federal income tax return multiplied by a percentage which is the average of the following three percentages: (A) The average value of such entity’s real and tangible personal property owned or rented and used in this state during the tax period divided by the average total value of such entity’s real and tangible personal property owned or rented and used during the tax period; (B) the total amount of compensation paid by such entity in this state during the tax period divided by the total amount of compensation paid everywhere by such entity during the tax period; and (C) the total sales of such entity in this state during the tax period divided by the total sales of such entity everywhere during the tax period. If such entity has no real and tangible personal property owned or rented and used, compensation paid or sales made for the tax period, then the average percentage shall be determined by using only those percentages for property, compensation and sales which reflect property or activity;

(4) “shareholder’s equity” means the sum of: (1) Paid-in capital stock, except that paid-in capital stock shall not include any capital stock issued by a corporation and reacquired by such corporation through gift, purchase or otherwise and available for resale or retirement; (2) capital paid in, in excess of par; and (3) retained earnings, all as stated on such corporation’s federal income tax return;

(5) “shareholder’s equity attributable to Kansas” means the shareholder’s equity of a corporation multiplied by a percentage which is the average of the following three percentages: (A) The average value of the corporation’s real and tangible personal property owned or rented and used in this state during the tax period divided by the average total value of the corporation’s real and tangible personal property owned or rented and used during the tax period; (B) the total amount of compensation

paid by the corporation in this state during the tax period divided by the total amount of compensation paid everywhere by the corporation during the tax period; and (C) the total sales of the corporation in this state during the tax period divided by the total sales of the corporation everywhere during the tax period. If a corporation has no real and tangible personal property owned or rented and used, compensation paid or sales made for the tax period, then the average percentage shall be determined by using only those percentages for property, compensation and sales which reflect property or activity; and

(6) “taxable equity attributable to Kansas” means shareholder’s equity attributable to Kansas.

(g) The provisions of this section shall apply to all tax years commencing after December 31, 2003, but shall not apply to any tax year commencing after December 31, 2010.

(h) The provisions of this section shall be known and may be cited as the Kansas franchise tax act.

Sec. 2. K.S.A. 2006 Supp. 79-5401, as amended by section 1 of 2007 House Bill No. 2264, is hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

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SENATE concurred in  
HOUSE amendments \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*