

[As Amended by House Committee of the Whole]

As Amended by House Committee

[As Amended by Senate Committee of the Whole]

As Further Amended by Senate Committee

As Amended by Senate Committee

Session of 2008

SENATE BILL No. 471

By Committee on Assessment and Taxation

1-24

18 AN ACT concerning taxation; relating to electronic filing of returns and
19 reports; **imposing a carbon mitigation incentive tax and provid-**
20 **ing for an income tax credit relating thereto;] income tax credits;**
21 **adoption; expenses related to living organ donations;** amending
22 K.S.A. 79-3220 and K.S.A. 2007 Supp. 75-5151 **and 79-32,202** and
23 repealing the existing sections.

24
25 *Be it enacted by the Legislature of the State of Kansas:*

26 New Section 1. (a) ~~The secretary of revenue may require an individ-~~
27 ~~ual, a business or other legal entity to file any tax return prepared other~~
28 ~~than by a paid preparer by electronic means whenever the department~~
29 ~~of revenue permits electronic filing. Unless otherwise specifically pro-~~
30 ~~vided by statute~~ **Subject to the requirements specified in K.S.A. 79-**
31 **3220, and amendments thereto,** the secretary of revenue may require
32 a paid preparer to file some or all of the tax returns by electronic means
33 whenever the department of revenue permits electronic filing.

34 (b) As used in this act: (1) "Electronic means" means computer gen-
35 erated electronic or magnetic media, web based applications or similar
36 electronic, magnetic or computer based methods or applications;

37 (2) "paid preparer" means any person or business that prepares tax
38 returns for compensation or employs or authorizes one or more persons
39 to prepare such returns. The number of returns prepared per year shall
40 be determined by including all returns prepared by the person or busi-
41 ness, and by all employees or agents of the person or business, whether
42 prepared at one location or multiple locations; and

43 (3) "tax returns" means returns or reports filed for any tax adminis-

1 tered by the department of revenue including, but not limited to, income
2 tax, sales and use tax, motor fuel tax, mineral tax and other excise taxes.

3 Sec. 2. K.S.A. 2007 Supp. 75-5151 is hereby amended to read as
4 follows: 75-5151. The secretary of revenue may require, consistent with
5 sound cash management policies, that any taxpayer whose total sales tax
6 liability exceeds ~~\$100,000~~ ~~\$32,000~~ **[\$45,000]** in any calendar year, any
7 taxpayer whose total withholding tax liability exceeds ~~\$100,000~~ ~~\$32,000~~
8 **[\$45,000]** in any calendar year, and any person owing any taxes or fees
9 in connection with any return, report or document other than for sales
10 tax or withholding tax liability, shall remit their tax liability by electronic
11 funds transfer no later than the date required for such remittance except
12 that the secretary may adopt rules and regulations prescribing alternative
13 filing and payment dates not later than the last day of the month in which
14 the tax was otherwise due. Electronic funds transfers may be made by
15 wire transfers of funds through the federal reserve system or by any other
16 means established by the secretary, with the approval of the state trea-
17 surer, which insures the availability of such funds to the state on the date
18 of payment. Evidence of such payment shall be furnished to the secretary
19 on or before the due date of the tax as established by law. Failure to
20 timely make such payment in immediately available funds or failure to
21 provide such evidence of payment in a timely manner shall subject the
22 taxpayer to penalty and interest as provided by law for delinquent or
23 deficient tax payments. All sales and use tax remittances from model 1, 2
24 and 3 sellers must be remitted electronically. Any data that accompanies
25 a remittance must be formatted using uniform tax type and payment type
26 codes approved by the secretary.

27 Sec. 3. K.S.A. 79-3220 is hereby amended to read as follows: 79-
28 3220. (a) (1) Each individual required to file a federal income tax return
29 and any other individual whose gross income exceeds the sum of such
30 individual's applicable Kansas standard deduction amount and Kansas
31 personal exemption amount shall each make and sign a return or state-
32 ment stating specifically such items as are required by the forms and rules
33 and regulations of the secretary of revenue. ~~Such return may be filed by~~
34 ~~electronic means in a manner approved by the secretary of revenue.~~ If
35 any individual is unable to make a return, the return shall be made by a
36 duly authorized agent or by the guardian or other person charged with
37 the care of the person or property of such taxpayer. Notwithstanding any
38 provision of the Kansas income tax act to the contrary, all individuals not
39 required to file a Kansas income tax return hereunder shall not be liable
40 for any tax imposed pursuant to such act.

41 (2) *In accordance with the provisions of section 1, and amendments*
42 *thereto, an individual who is required to file a return may file such return*
43 *by electronic means in a manner approved by the secretary of revenue.*

1 *A paid preparer who prepares 50 or more returns per year shall file by*
2 *electronic means not less than ~~90%~~ 75% of such returns eligible for elec-*
3 *tronic filing. **The requirements of this subsection may be waived by***
4 ***the secretary of revenue for a paid preparer if the paid preparer***
5 ***demonstrates a hardship in complying with the requirements of***
6 ***this subsection.***

7 (b) Every corporation subject to taxation under this act, including,
8 but not limited to, all farmers, fruit growers, or like associations organized
9 and operated on a cooperative basis, except electric cooperative exclu-
10 sively engaged in the manufacture or distribution of electric power for
11 their members, shall make a return, or statement stating specifically such
12 items as may be required by the forms and regulations of the secretary
13 of revenue. The return shall be signed by the president, vice-president,
14 treasurer, assistant treasurer, chief accounting officer, or any other officer
15 so authorized to act. The fact that an individual's name is signed on a
16 return shall be prima facie evidence that such individual is authorized to
17 sign such return on behalf of such corporation. In cases where receivers,
18 trustees in bankruptcy or assignees are operating the property or business
19 of corporations, such receivers, trustees, or assignees shall make returns
20 for such corporations in the same manner and form as corporations are
21 required to make returns. Any tax due on the basis of such returns shall
22 be collected in the same manner as if collected from the corporation for
23 which the return is made.

24 (c) Every fiduciary, except a receiver appointed by authority of law
25 in possession of part only of the property of an individual shall make and
26 sign a return for each of the individuals, estates, or trusts for which the
27 fiduciary acts, when such returns are required by the provisions of this
28 act, stating specifically such items as may be required by the forms and
29 regulations of the secretary of revenue. In the case of joint fiduciaries,
30 whether residents or nonresidents, a return may be made by any one and
31 shall be sufficient compliance with the above requirements. Any fiduciary
32 required to make a return under this act shall be subject to all of the
33 provisions of law which apply to individuals.

34 (d) Every partnership shall make a return for each taxable year, stat-
35 ing specifically such items as may be required by the forms and regula-
36 tions of the secretary of revenue. The returns shall be signed by any one
37 of the partners.

38 **Sec. 4. K.S.A. 2007 Supp. 79-32,202 is hereby amended to**
39 **read as follows: 79-32,202. (a) For all taxable years commencing**
40 **after December 31, 2005, and in addition to the credit provided**
41 **in subsection (b), there shall be allowed as a credit against the tax**
42 **liability of a resident individual imposed under the Kansas income**
43 **tax act an amount equal to: (1) 25% of the amount of the credit**

1 allowed against such taxpayer's federal income tax liability pur-
2 suant to section 23 determined without regard to subsection (c)
3 thereof of the federal internal revenue code; (2) in addition to
4 subsection (a)(1), 25% of the amount of such federal income tax
5 credit, if the child adopted by the taxpayer was a resident of Kansas
6 prior to such lawful adoption; and (3) and in addition to subsections
7 (a)(1) and (a)(2), 25% of the amount of such federal income tax
8 credit, if the child adopted by the taxpayer is a child with special
9 needs, as defined in section 23 of the federal internal revenue
10 code, and the child was a resident of Kansas prior to such lawful
11 adoption, for the taxable year in which such credit was claimed
12 against the taxpayer's federal income tax liability.

13 (b) For all taxable years commencing after December 31, ~~1996~~
14 2003, in addition to the credit provided in subsection (a), there shall be
15 allowed as a credit against the tax liability of a resident individual
16 imposed under the Kansas income tax act an amount equal to
17 \$1,500 for the taxable year in which occurs the lawful adoption of
18 a child in the custody of the secretary of social and rehabilitation
19 services or a child with special needs, whether or not such individ-
20 ual is reimbursed for all or part of qualified adoption expenses or
21 has received a public or private grant therefor. As used in this
22 subsection, terms and phrases shall have the meanings ascribed
23 thereto by the provisions of section 23 of the federal internal rev-
24 enue code. ~~No credit shall be allowed under subsection (a) for any qual-~~
25 ~~ified adoption expenses incurred in the adoption of a child described by~~
26 ~~this subsection. Notwithstanding any provision of law to the contrary, a~~
27 ~~taxpayer may file an amended return to claim the credit under this sub-~~
28 ~~section or subsection (a) for taxable years 2004 and 2005, if the taxpayer~~
29 ~~only claimed the credit under subsection (a) or (b), but not both for such~~
30 ~~taxable years.~~

31 (c) The credit allowed by subsections (a) and (b) shall not ex-
32 ceed the amount of the tax imposed by K.S.A. 79-32,110, and
33 amendments thereto, reduced by the sum of any other credits al-
34 lowable pursuant to law. If the amount of such tax credit exceeds
35 the taxpayer's income tax liability for such taxable year, the amount
36 thereof which exceeds such tax liability may be carried over for
37 deduction from the taxpayer's income tax liability in the next suc-
38 ceeding taxable year or years until the total amount of the tax
39 credits has been deducted from tax liability.

40 New Sec. 5. (a) For all taxable years commencing after De-
41 cember 31, 2006, there shall be allowed a tax credit against the
42 income tax liability imposed upon a taxpayer pursuant to the Kan-
43 sas income tax act, in an amount equal to unreimbursed expendi-

1 tures incurred by a taxpayer or a dependent of the taxpayer not to
2 exceed \$10,000 related to the donation, while living, of one or
3 more human organs of the taxpayer or a dependent of the taxpayer
4 to another person for human organ transplantation. The credit
5 under this section shall only be claimed one time by a taxpayer.
6 The tax credit under this section shall be deducted from the tax-
7 payer's income tax liability for expenditures incurred in the taxable
8 year in which the organ transplantation occurs. If the amount of
9 the credit exceeds the taxpayer's income tax liability imposed un-
10 der the Kansas income tax act, such excess amount shall be re-
11 funded to the taxpayer. As used in this section, "human organ"
12 means all or part of a liver, pancreas, kidney, intestine, lung or
13 bone marrow.

14 [New Sec. 6. (a) As used in this section:

15 [(1) "Adjusted carbon dioxide emissions" means the average of
16 the amounts of carbon dioxide emissions per net megawatt hour
17 emitted from all electricity generating capacity operated by a
18 utility.

19 [(2) "Carbon mitigation incentive tax" means the annual excise
20 tax on carbon dioxide emissions imposed pursuant to this section.

21 [(3) "Electricity generating capacity" means coal-fired elec-
22 tricity generating capacity, located in this state, which has a name-
23 plate capacity greater than 350 megawatts.

24 [(4) "Emissions fees" means emissions fees pursuant to K.S.A.
25 65-3024, and amendments thereto.

26 [(5) "Secretary" means the secretary of health and
27 environment.

28 [(6) "Utility" means the owner of electricity generating
29 capacity.

30 [(b) There is hereby imposed the carbon mitigation incentive
31 tax on carbon dioxide emissions from electricity generating capac-
32 ity. The rate of such tax shall be \$37 per ton of adjusted carbon
33 dioxide emissions for total net megawatt hours produced during
34 the preceding calendar year in excess of 110% of the statewide
35 average adjusted carbon dioxide emissions for total net megawatt
36 hours produced by all electric utilities, as determined by the sec-
37 retary, during the preceding calendar year.

38 [(c) For purposes of this section, adjusted carbon dioxide emis-
39 sions from electricity generating capacity shall be determined by
40 the utility operating the capacity consistent with the methods re-
41 quired by rules and regulations of the secretary. The utility shall
42 report the amount so determined to the secretary on the date spec-
43 ified by rules and regulations of the secretary for purposes of de-

1 terminating such fees.

2 [(d) The utility shall remit the tax imposed by this section to
3 the secretary on or before the date for payment of emissions fees.
4 The secretary shall remit to the state treasurer, in accordance with
5 the provisions of K.S.A. 75-4215, and amendments thereto, all
6 moneys received by the secretary pursuant to this section. Upon
7 receipt of the remittance, the state treasurer shall deposit the en-
8 tire amount in the state treasury and credit it to the state general
9 fund.

10 [(e) The secretary shall administer, enforce and collect the tax
11 imposed by this section in the manner provided by law for admin-
12 istration, enforcement and collection of emissions fees. All laws
13 and rules and regulations of the secretary relating to the admin-
14 istration, enforcement and collection of emissions fees shall apply
15 to such tax insofar as they can be made applicable, and the sec-
16 retary shall adopt such additional rules and regulations as neces-
17 sary for the efficient and effective administration, enforcement
18 and collection thereof.

19 [New Sec. 7. (a) As used in this section:

20 [(1) Terms have the meanings provided in section 6, and
21 amendments thereto.

22 [(2) “Qualified taxpayer” means the utility which had the low-
23 est adjusted carbon dioxide emissions of all utilities during the
24 preceding calendar year, after deduction of amounts, as reported
25 to and approved by the secretary of health and environment in
26 accordance with rules and regulations of the secretary, of carbon
27 dioxide emissions captured and sequestered by the utility or mit-
28 igated or offset by such utility by the generation of electricity from
29 renewable resources or the purchase of electricity generated from
30 renewable resources. The secretary of health and environment
31 shall adopt rules and regulations for the determination of carbon
32 dioxide emissions captured and sequestered, mitigated or offset
33 for purposes of identifying a qualified taxpayer.

34 [(b) For all taxable years commencing after December 31,
35 2008, there shall be allowed a tax credit against the income tax
36 liability imposed upon a qualified taxpayer pursuant to the Kansas
37 income tax act in an amount equal to the total amount of carbon
38 mitigation incentive tax collected from all utilities pursuant to sec-
39 tion 6, and amendments thereto, for the preceding calendar year.
40 If the amount of such tax credit exceeds the qualified taxpayer’s
41 income tax liability for the year in which the taxpayer qualifies,
42 such excess amount may be carried over for deduction from such
43 taxpayer’s income tax liability in the next succeeding year or years

1 until the total amount of the credit has been deducted from tax
2 liability, except that no such credit shall be carried over for de-
3 duction after the 10th taxable year succeeding the taxable year in
4 which the qualified rehabilitation plan was placed in service.

5 [(c) If the taxpayer is a corporation having an election in effect
6 under subchapter S of the federal internal revenue code, a part-
7 nership or a limited liability company, the credit provided by this
8 section shall be claimed by the shareholders of such corporation,
9 the partners of such partnership or the members of such limited
10 liability company in the same manner as such shareholders, part-
11 ners or members account for their proportionate shares of the
12 income or loss of the corporation, partnership or limited liability
13 company, or as the corporation, partnership or limited liability
14 company mutually agree as provided in the bylaws or other exe-
15 cuted agreement. Credits granted to a partnership, a limited lia-
16 bility company taxed as a partnership or other multiple owners of
17 property shall be passed through to the partners, members or own-
18 ers respectively pro rata or pursuant to an executed agreement
19 among the partners, members or owners documenting any alter-
20 nate distribution method.

21 [(d) Any taxpayer, hereinafter designated the transferor, may
22 sell, assign, convey or otherwise transfer a tax credit allowed and
23 earned pursuant to this section. The sale price of a tax credit shall
24 be at least 75% of the full value of the credit. The taxpayer ac-
25 quiring earned credits, hereinafter designated the transferee,
26 shall be required to be an entity engaged in the business of gen-
27 eration, marketing and sale of electricity. The transferee may use
28 the amount of the acquired credit to offset up to 100% of the trans-
29 feree's income tax liability in the taxable year in which the trans-
30 feror qualified for the tax credit or the taxable year in which the
31 credit is acquired. Unused credit amounts claimed by the trans-
32 feree may be carried forward for up to five years. Such credits may
33 be sold or transferred only one time and, if sold or transferred,
34 shall be transferred in the taxable year such credit is earned or the
35 two successive taxable years. The transferor shall enter into a writ-
36 ten agreement with the transferee establishing the terms and con-
37 ditions of the agreement and shall perfect such transfer by noti-
38 fying the director of taxation in writing within 30 calendar days
39 following the effective date of the transfer and shall provide any
40 information as may be required by such director to administer and
41 carry out the provisions of this section. The amount received by
42 the transferor of such tax credit shall be taxable as income of the
43 transferor, and the excess of the value of such credit over the

1 **amount paid by the transferee for such credit shall be taxable as**
2 **income of the transferee.]**

3 Sec. ~~46~~ [8]. K.S.A. 79-3220 and K.S.A. 2007 Supp. 75-5151 **and 79-**
4 **32,202** are hereby repealed.

5 Sec. ~~57~~ [9]. This act shall take effect and be in force from and after
6 its publication in the statute book.