

## HOUSE BILL No. 2028

By Committee on Taxation

1-16

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9 AN ACT concerning taxation; relating to the franchise tax; rates; contin-  
10 uation; amending K.S.A. 2008 Supp. 79-5401 and repealing the exist-  
11 ing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2008 Supp. 79-5401 is hereby amended to read as  
15 follows: 79-5401. (a) (1) Subject to the limitations provided in subsection  
16 (g), for any foreign or domestic for profit corporation, or professional  
17 corporation or association, duly registered and authorized to do business  
18 in Kansas by the secretary of state and which has taxable equity attrib-  
19 utable to Kansas ~~for the tax year commencing after December 31, 2005,~~  
20 ~~of \$100,000 or more, and for tax years commencing after December 31,~~  
21 ~~2006, through December 31, 2009,~~ of \$1,000,000 or more, such entity  
22 shall pay an annual franchise tax to the secretary of revenue ~~for tax years~~  
23 ~~commencing after December 31, 2005, and December 31, 2006, at the~~  
24 ~~rate of .125%, for the tax year commencing after December 31, 2007, at~~  
25 ~~the rate of .09375%, for the tax year commencing after December 31,~~  
26 ~~2008, at the rate of .0625%, and for the tax year commencing after De-~~  
27 ~~cember 31, 2009, at the rate of .03125%,~~ of such entity's taxable equity  
28 attributable to Kansas, except that such annual franchise tax for any such  
29 entity shall not exceed \$20,000.

30 (2) Subject to the limitations provided in subsection (g), for any for-  
31 eign or domestic limited liability company, foreign or domestic limited  
32 partnership or foreign or domestic limited liability partnership duly reg-  
33 istered and authorized to do business in Kansas by the secretary of state  
34 and which has net capital accounts located in or used in this state at the  
35 end of the taxable year as required to be reported on the federal part-  
36 nership return of income ~~for the tax year commencing after December~~  
37 ~~31, 2005, of \$100,000 or more, and for tax years commencing after De-~~  
38 ~~cember 31, 2006, through December 31, 2009,~~ of \$1,000,000 or more,  
39 such entity shall pay an annual franchise tax to the secretary of revenue  
40 ~~for tax years commencing after December 31, 2005, and December 31,~~  
41 ~~2006, at the rate of .125%, for the tax year commencing after December~~  
42 ~~31, 2007, at the rate of .09375%, for the tax year commencing after De-~~  
43 ~~cember 31, 2008, at the rate of .0625%, and for the tax year commencing~~

1 ~~after December 31, 2009, at the rate of .03125%~~, of the net capital ac-  
2 counts located in or used in this state at the end of the taxable year as  
3 required to be reported on the federal partnership return of income, or  
4 for a one-member LLC taxed as a sole proprietorship which has net book  
5 value of the LLC as calculated on an income tax basis located in or used  
6 in this state at the end of the taxable year ~~for the tax year commencing~~  
7 ~~after December 31, 2005, of \$100,000 or more, and for tax years com-~~  
8 ~~mencing after December 31, 2006, through December 31, 2009, of~~  
9 ~~\$1,000,000 or more, for tax years commencing after December 31, 2005,~~  
10 ~~and December 31, 2006, at the rate of .125%, for the tax year commene-~~  
11 ~~ing after December 31, 2007, at the rate of .09375%, for the tax year~~  
12 ~~commencing after December 31, 2008, at the rate of .0625%, and for the~~  
13 ~~tax year commencing after December 31, 2009, at the rate of .03125%,~~  
14 of net book value of the LLC as calculated on an income tax basis located  
15 in or used in this state at the end of the taxable year, except that such  
16 annual franchise tax for any such entity shall not exceed \$20,000.

17 (3) Subject to the limitations provided in subsection (g), for any busi-  
18 ness trust duly registered and authorized to do business in Kansas by the  
19 secretary of state and which has corpus as shown on its balance sheet at  
20 the end of the taxable year as required to be reported to the secretary of  
21 revenue ~~for the tax year commencing after December 31, 2005, of~~  
22 ~~\$100,000 or more, and for tax years commencing after December 31,~~  
23 ~~2006, through December 31, 2009, of \$1,000,000 or more, such entity~~  
24 ~~shall pay an annual franchise tax to the secretary of revenue for tax years~~  
25 ~~commencing after December 31, 2005, and December 31, 2006, at the~~  
26 ~~rate of .125%, for the tax year commencing after December 31, 2007, at~~  
27 ~~the rate of .09375%, for the tax year commencing after December 31,~~  
28 ~~2008, at the rate of .0625%, and for the tax year commencing after De-~~  
29 ~~cember 31, 2009, at the rate of .03125%~~, of the corpus as shown on its  
30 balance sheet at the end of the taxable year as required to be reported  
31 to the secretary of revenue or in the case of a foreign business trust which  
32 has a corpus which is located in or which it uses or intends to use in this  
33 state as shown on its balance sheet at the end of the taxable year as  
34 required to be reported to the secretary of revenue ~~for the tax year com-~~  
35 ~~mencing after December 31, 2005, of \$100,000 or more, and for tax years~~  
36 ~~commencing after December 31, 2006, through December 31, 2009, of~~  
37 ~~\$1,000,000 or more, for tax years commencing after December 31, 2005,~~  
38 ~~and December 31, 2006, at the rate of .125%, for the tax year commene-~~  
39 ~~ing after December 31, 2007, at the rate of .09375%, for the tax year~~  
40 ~~commencing after December 31, 2008, at the rate of .0625%, and for the~~  
41 ~~tax year commencing after December 31, 2009, at the rate of .03125%,~~  
42 of that portion of the corpus which is located in or which it uses or intends  
43 to use in this state as shown on its balance sheet at the end of the taxable

1 year as required to be reported to the secretary of revenue, except that  
2 the annual franchise tax for any such entity shall not exceed \$20,000. Such  
3 balance sheet shall be as of the end of the tax period, certified by the  
4 trustee, fairly and truly reflecting the trust assets and liabilities and spe-  
5 cifically setting out its corpus, and, in the case of a foreign business trust,  
6 fairly and truly reflecting an allocation of its moneys and other assets as  
7 between those located, used or to be used, in this state and those located,  
8 used or to be used elsewhere.

9 (b) (1) Every corporation or association, business trust, limited lia-  
10 bility company, limited partnership or limited liability partnership subject  
11 to taxation under this act, regardless of whether such entity has a franchise  
12 tax liability, shall make a return, stating specifically such information as  
13 may be required by the forms, rules and regulations of the secretary of  
14 revenue, which return shall include a balance sheet listing all assets and  
15 liabilities as of the end of the tax year, as reported in the federal income  
16 tax return on form 1120 or, if no such federal return is required to be  
17 filed, such balance sheet information as otherwise required by the sec-  
18 retary, and such further information showing the allocation or apportion-  
19 ment calculations in computing the amount of the franchise tax. The  
20 return of a corporation or association shall be signed by the president,  
21 vice-president, treasurer, assistant treasurer, chief accounting officer or  
22 any other officer so authorized to act. The fact that an individual's name  
23 is signed on a return shall be *prima facie* evidence that such individual is  
24 authorized to sign such return on behalf of such corporation. In cases  
25 where receivers, trustees in bankruptcy or assignees are operating the  
26 property or business of corporations, such receivers, trustees, or assignees  
27 shall make returns for such corporations in the same manner and form  
28 as corporations are required to make returns. Any tax due on the basis of  
29 such returns shall be collected in the same manner as if collected from  
30 the corporation for which the return is made. The returns of a limited  
31 liability partnership shall be signed by a partner of the limited liability  
32 partnership. The returns of a limited liability company shall be signed by  
33 a member of the limited liability company.

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

37 (3) The director of taxation may grant a reasonable extension of time  
38 for filing returns in accordance with rules and regulations of the secretary  
39 of revenue. Whenever any such extension of time to file is requested by  
40 a taxpayer and granted by the director, no penalty authorized by K.S.A.  
41 79-3228, and amendments thereto, shall be imposed if 90% of the liability  
42 is paid on or before the original due date.

43 (c) (1) All taxes imposed under the provisions of the Kansas franchise

1 tax act shall be paid on the 15th day of the fourth month following the  
2 close of the taxable year. When the tax as shown to be due on a return is  
3 less than \$5, such tax shall be canceled and no payment need be remitted  
4 by the taxpayer.

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

11 (d) The provisions of K.S.A. 79-3226, 79-3228, 79-3228a, 79-3229,  
12 79-3230, 79-3233, 79-3233a, 79-3233b, 79-3233g, 79-3233h, 79-3233i,  
13 79-3234, 79-3235 and 79-3236, and amendments thereto, shall apply to  
14 the administration and enforcement of this section.

15 (e) All taxes paid pursuant to the provisions of this act shall be  
16 rounded off to the nearest \$1, and unless other disposition is specifically  
17 provided by law, the taxes collected under the provisions of this act and  
18 all overpayments which may not be refunded under this section shall be  
19 remitted to the state treasurer in accordance with the provisions of K.S.A.  
20 75-4215, and amendments thereto. Upon receipt of each such remittance,  
21 the state treasurer shall deposit the entire amount in the state treasury  
22 to the credit of the state general fund. The secretary of revenue shall not  
23 refund any overpayment of franchise taxes which is equal to \$5 or less,  
24 shall not credit any domestic corporation or foreign corporation, associ-  
25 ation, business trust, limited liability company, limited partnership or lim-  
26 ited liability partnership with any amount which may not be refunded  
27 under this section, and shall not require reimbursement for any under-  
28 payment of franchise taxes which is less than \$5. Franchise tax refunds  
29 shall be paid to the claimant from the income tax refund fund upon war-  
30 rants of the director of accounts and reports pursuant to vouchers ap-  
31 proved by the director of taxation, but no warrant issued hereunder shall  
32 be drawn in an amount less than \$5. No interest shall be allowed on any  
33 payment made to a claimant pursuant to this act.

34 (f) As used in this section: (1) "Act" means the Kansas franchise tax  
35 act;

36 (2) "net book value as calculated on an income tax basis located in or  
37 used in this state" means the net book value of a limited liability company  
38 multiplied by a percentage which is the average of the following three  
39 percentages: (A) The average value of the limited liability company's real  
40 and tangible personal property owned or rented and used in this state  
41 during the tax period divided by the average total value of the limited  
42 liability company's real and tangible personal property owned or rented  
43 and used during the tax period; (B) the total amount of compensation

1 paid by the limited liability company in this state during the tax period  
2 divided by the total amount of compensation paid everywhere by the  
3 limited liability company during the tax period; and (C) the total sales of  
4 the limited liability company in this state during the tax period divided  
5 by the total sales of the limited liability company everywhere during the  
6 tax period. If a limited liability company has no real and tangible property  
7 owned or rented and used, compensation paid or sales made for the tax  
8 period, then the average percentage shall be determined by using only  
9 those percentages for property, compensation and sales which reflect  
10 property or activity;

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

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

34 (5) “shareholder’s equity attributable to Kansas” means the share-  
35 holder’s equity of a corporation multiplied by a percentage which is the  
36 average of the following three percentages: (A) The average value of the  
37 corporation’s real and tangible personal property owned or rented and  
38 used in this state during the tax period divided by the average total value  
39 of the corporation’s real and tangible personal property owned or rented  
40 and used during the tax period; (B) the total amount of compensation  
41 paid by the corporation in this state during the tax period divided by the  
42 total amount of compensation paid everywhere by the corporation during  
43 the tax period; and (C) the total sales of the corporation in this state during

- 1 the tax period divided by the total sales of the corporation everywhere  
2 during the tax period. If a corporation has no real and tangible personal  
3 property owned or rented and used, compensation paid or sales made for  
4 the tax period, then the average percentage shall be determined by using  
5 only those percentages for property, compensation and sales which reflect  
6 property or activity; and
- 7 (6) “taxable equity attributable to Kansas” means shareholder’s equity  
8 attributable to Kansas.
- 9 (g) The provisions of this section shall apply to all tax years com-  
10 mencing after December 31, ~~2003, but shall not apply to any tax year~~  
11 ~~commencing after December 31, 2010~~ 2008.
- 12 (h) The provisions of this section shall be known and may be cited as  
13 the Kansas franchise tax act.
- 14 Sec. 2. K.S.A. 2008 Supp. 79-5401 is hereby repealed.
- 15 Sec. 3. This act shall take effect and be in force from and after its  
16 publication in the statute book.