

**SENATE BILL No. 334**

By Committee on Ways and Means

4-29

9 AN ACT concerning taxation; relating to estate tax rates; franchise tax  
10 rates; amending K.S.A. 2008 Supp. 79-15,203, 79-15,251, 79-15,253  
11 and 79-5401 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 2008 Supp. 79-15,203 is hereby amended to read  
15 as follows: 79-15,203. (a) A tax is hereby imposed on the taxable estate  
16 of every resident decedent, and every nonresident decedent who owned  
17 real, personal or intangible property with a tax situs in Kansas.

18 (b) The tax imposed by this section shall be computed in accordance  
19 with the following schedule:

20 (A) For tax year 2007:

21 If the taxable estate is:	The tax is:
22 Not over \$1,000,000 .....	Zero
23 Over \$1,000,000 but not over \$2,000,000 ....	3.0% of excess over \$1,000,000
24 Over \$2,000,000 but not over \$5,000,000 ....	\$30,000 plus 6.0% of excess over 25 \$2,000,000
26 Over \$5,000,000 but not over \$10,000,000 ..	\$210,000 plus 8.0% of excess over 27 \$5,000,000
28 Over \$10,000,000 .....	\$610,000 plus 10.0% of excess over 29 \$10,000,000

30 (B) For tax ~~year~~ years 2008 through 2011:

31 If the taxable estate is:	The tax is:
32 Not over \$1,000,000 .....	Zero
33 Over \$1,000,000 but not over \$2,000,000 ....	1.0% of excess over \$1,000,000
34 Over \$2,000,000 but not over \$5,000,000 ....	\$10,000 plus 2.0% of excess over 35 \$2,000,000
36 Over \$5,000,000 but not over \$10,000,000 ..	\$70,000 plus 5.0% of excess over 37 \$5,000,000
38 Over \$10,000,000 .....	\$320,000 plus 7.0% of excess over 39 \$10,000,000

40 (C) For tax year ~~2009~~ 2012:

41 If the taxable estate is:	The tax is:
42 Not over \$1,000,000 .....	Zero
43 Over \$1,000,000 but not over \$2,000,000 ....	0.5% of excess over \$1,000,000

1	Over \$2,000,000 but not over \$5,000,000 . . . .	\$5,000 plus 1.0% of excess over \$2,000,000
2	Over \$5,000,000 but not over \$10,000,000 ..	\$35,000 plus 2.0% of excess over
3		\$5,000,000
4	Over \$10,000,000 .....	\$135,000 plus 3.0% of excess over
5		\$10,000,000

6       Sec. 2. K.S.A. 2008 Supp. 79-15,251 is hereby amended to read as  
7 follows: 79-15,251. The provisions of this act shall apply to the estates of  
8 all decedents dying after December 31, 2006, but before January 1, ~~2010~~  
9 2013. The provisions of article 15 of chapter 79, as such provisions existed  
10 prior to January 1, 2007, shall be applicable to the estates of all decedents  
11 dying before January 1, 2007.

12       Sec. 3. K.S.A. 2008 Supp. 79-15,253 is hereby amended to read as  
13 follows: 79-15,253. On January 1, ~~2010~~ 2013, the provisions of K.S.A. 2008  
14 Supp. 79-15,201 through 79-15,253, and amendments thereto, are hereby  
15 repealed.

16       Sec. 4. K.S.A. 2008 Supp. 79-5401 is hereby amended to read as  
17 follows: 79-5401. (a) (1) Subject to the limitations provided in subsection  
18 (g), for any foreign or domestic for profit corporation, or professional  
19 corporation or association, duly registered and authorized to do business  
20 in Kansas by the secretary of state and which has taxable equity  
21 attributable to Kansas ~~for the tax year commencing after December 31,~~  
22 ~~2005, of \$100,000 or more, and for tax years commencing after December~~  
23 ~~31, 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~~  
27 ~~through December 31, 2010, at the rate of .09375%, for the tax year~~  
28 ~~commencing after December 31, 2008 2011, at the rate of .0625%, and~~  
29 ~~for the tax year commencing after December 31, 2009 2012, at the rate~~  
30 ~~of .03125%, of such entity's taxable equity attributable to Kansas, except~~  
31 ~~that such annual franchise tax for any such entity shall not exceed \$20,000.~~

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

1 after December 31, 2007 *through December 31, 2010*, at the rate of  
2 .09375%, for the tax year commencing after December 31, ~~2008~~ 2011, at  
3 the rate of .0625%, and for the tax year commencing after December 31,  
4 ~~2009~~ 2012, at the rate of .03125%, of the net capital accounts located in  
5 or used in this state at the end of the taxable year as required to be  
6 reported on the federal partnership return of income, or for a one-  
7 member LLC taxed as a sole proprietorship which has net book value of  
8 the LLC as calculated on an income tax basis located in or used in this  
9 state at the end of the taxable year ~~for the tax year commencing after~~  
10 ~~December 31, 2005, of \$100,000 or more, and for tax years commencing~~  
11 ~~after December 31, 2006, through December 31, 2009, of \$1,000,000 or~~  
12 ~~more, for tax years commencing after December 31, 2005, and December~~  
13 ~~31, 2006, at the rate of .125%, for the tax year commencing after~~  
14 ~~December 31, 2007 through December 31, 2010, at the rate of .09375%,~~  
15 ~~for the tax year commencing after December 31, 2008 2011, at the rate~~  
16 ~~of .0625%, and for the tax year commencing after December 31, 2009~~  
17 ~~2012, at the rate of .03125%, of net book value of the LLC as calculated~~  
18 ~~on an income tax basis located in or used in this state at the end of the~~  
19 ~~taxable year, except that such annual franchise tax for any such entity shall~~  
20 ~~not exceed \$20,000.~~

21 (3) Subject to the limitations provided in subsection (g), for any  
22 business trust duly registered and authorized to do business in Kansas by  
23 the secretary of state and which has corpus as shown on its balance sheet  
24 at the end of the taxable year as required to be reported to the secretary  
25 of revenue ~~for the tax year commencing after December 31, 2005, of~~  
26 ~~\$100,000 or more, and for tax years commencing after December 31,~~  
27 ~~2006, through December 31, 2009, of \$1,000,000 or more, such entity~~  
28 ~~shall pay an annual franchise tax to the secretary of revenue for tax years~~  
29 ~~commencing after December 31, 2005, and December 31, 2006, at the~~  
30 ~~rate of .125%, for the tax year commencing after December 31, 2007~~  
31 ~~through December 31, 2010, at the rate of .09375%, for the tax year~~  
32 ~~commencing after December 31, 2008 2011, at the rate of .0625%, and~~  
33 ~~for the tax year commencing after December 31, 2009 2012, at the rate~~  
34 ~~of .03125%, of the corpus as shown on its balance sheet at the end of the~~  
35 ~~taxable year as required to be reported to the secretary of revenue or in~~  
36 ~~the case of a foreign business trust which has a corpus which is located~~  
37 ~~in or which it uses or intends to use in this state as shown on its balance~~  
38 ~~sheet at the end of the taxable year as required to be reported to the~~  
39 ~~secretary of revenue for the tax year commencing after December 31,~~  
40 ~~2005, of \$100,000 or more, and for tax years commencing after December~~  
41 ~~31, 2006, through December 31, 2009, of \$1,000,000 or more, for tax~~  
42 ~~years commencing after December 31, 2005, and December 31, 2006, at~~  
43 ~~the rate of .125%, for the tax year commencing after December 31, 2007~~

1 *through December 31, 2010*, at the rate of .09375%, for the tax year  
2 commencing after December 31, ~~2008~~ *2011*, at the rate of .0625%, and  
3 for the tax year commencing after December 31, ~~2009~~ *2012*, at the rate  
4 of .03125%, of that portion of the corpus which is located in or which it  
5 uses or intends to use in this state as shown on its balance sheet at the  
6 end of the taxable year as required to be reported to the secretary of  
7 revenue, except that the annual franchise tax for any such entity shall not  
8 exceed \$20,000. Such balance sheet shall be as of the end of the tax  
9 period, certified by the trustee, fairly and truly reflecting the trust assets  
10 and liabilities and specifically setting out its corpus, and, in the case of a  
11 foreign business trust, fairly and truly reflecting an allocation of its moneys  
12 and other assets as between those located, used or to be used, in this  
13 state and those located, used or to be used elsewhere.

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

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

42 (3) The director of taxation may grant a reasonable extension of time  
43 for filing returns in accordance with rules and regulations of the secretary

1 of revenue. Whenever any such extension of time to file is requested by  
2 a taxpayer and granted by the director, no penalty authorized by K.S.A.  
3 79-3228, and amendments thereto, shall be imposed if 90% of the liability  
4 is paid on or before the original due date.

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

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

16 (d) The provisions of K.S.A. 79-3226, 79-3228, 79-3228a, 79-3229,  
17 79-3230, 79-3233, 79-3233a, 79-3233b, 79-3233g, 79-3233h, 79-3233i,  
18 79-3234, 79-3235 and 79-3236, and amendments thereto, shall apply to  
19 the administration and enforcement of this section.

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

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

41 (2) "net book value as calculated on an income tax basis located in or  
42 used in this state" means the net book value of a limited liability company  
43 multiplied by a percentage which is the average of the following three

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

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

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

39 (5) "shareholder's equity attributable to Kansas" means the  
40 shareholder's equity of a corporation multiplied by a percentage which is  
41 the average of the following three percentages: (A) The average value of  
42 the corporation's real and tangible personal property owned or rented  
43 and used in this state during the tax period divided by the average total

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

12 (6) "taxable equity attributable to Kansas" means shareholder's equity  
13 attributable to Kansas.

14 (g) The provisions of this section shall apply to all tax years  
15 commencing after December 31, 2003, but shall not apply to any tax year  
16 commencing after December 31, ~~2010~~ 2013.

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

19 Sec. 5. K.S.A. 2008 Supp. 79-15,203, 79-15,251, 79-15,253 and 79-  
20 5401 are hereby repealed.

21 Sec. 6. This act shall take effect and be in force from and after its  
22 publication in the statute book.