

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:50 a.m. on March 24, 2003, in Room 519-S of the Capitol.

All members were present except: Senator Allen

Committee staff present: Chris Courtwright, Legislative Research Department  
April Holman, Legislative Research Department  
Gordon Self, Revisor of Statutes Office  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Jim Weisgerber, Kansas Department of Revenue

Others attending: See attached list.

Senator Corbin called attention to amendments to an inheritance tax bill suggested by the Kansas Department of Revenue. (Attachment 1) Jim Weisgerber, Kansas Department of Revenue, noted that the Department proposes to include the language in a substitute bill for **SB 94**. He explained that the proposal includes a complete inheritance tax and also includes the current state "pick up" tax law tied to federal law. He noted that the proposal addresses the following: (1) what assets are included in the gross estate and the valuation (definition section), (2) the taxing mechanism used ("pick up" or inheritance tax), and (3) administrative and enforcement provisions common to both tax mechanisms. He went on to say that the proposal provides that, if an estate is below the federal filing threshold, which at this time is \$700,000, one would defer to this legislation for information about the value of the gross estate and what assets are included in the gross estate. The valuation question would defer to federal law when the federal filing threshold of \$700,000 is reached and the requirement of a phantom federal report kicks in or when the point is reached where there is an actual federal filing.

Mr. Weisgerber noted that, if it is the Committee's preference is to retain the current federal law "pick up" tax and fix the succession tax so that it will generate the revenue as projected, the proposed legislation will accomplish both. It fixes the succession tax in that it flushes it out to make it a complete inheritance tax, and it fixes the current "pick up" tax in that it gives administrative provisions for enforcement.

Following committee discussion, Senator Corbin noted that action on the proposed language would be delayed until March 25 to allow members time to fully study it.

Senator Corbin opened a discussion of proposed amendments to a previously heard bill, **SB 170** concerning withholding and consulting fees paid to nonresidents. Gordon Self, Revisor of Statutes Office, distributed copies of the proposed amendments. (Attachment 2) For the Committee's information, Mr. Weisgerber explained that legislation imposing withholding requirements on distributions paid from subchapter S corporations, partnerships, and limited liability companies to non-Kansas residents was passed last year. Subsequently, the Department received several calls from accountants pointing out problems with the legislation. When the Department began to develop necessary forms and instructions, staff also discovered problems. To address the problems with withholding on distributions, the Department worked with the Kansas Society of Public Accounts this year and developed the proposed language, using South Carolina law as a model. Mr. Weisgerber went on to explain the intent of each section of the bill. He noted that the proposal ensures that payment will be made to the State of Kansas because the tax will be withheld by a business rather than giving nonresident individuals the opportunity to choose whether to report or not report. Following his explanation, several concerns and questions regarding application of the provisions were raised by the Committee. Senator Corbin commented that perhaps the bill should be assigned to an interim committee for further study.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:50 a.m. on March 24, 2003, in Room 519-S of the Capitol.

Senator Corbin opened a discussion on another previously heard bill, **HB 2205** concerning real estate transaction disclosures relating to special assessments and fees. Senator Goodwin discussed a proposed amendment to address an issue concerning property tax issues relating to the bill which unexpectedly came up in Cowley County. (Attachment 3) She explained that Strother Field Airport, located between Winfield and Arkansas City, was given to the county by General Strother's family with the condition that it is never to be sold. Because the land cannot be purchased, seventy-eight industries which have built on Strother Field property lease the land. Approximately three weeks ago, General Electric filed a lawsuit alleging that the companies should not have been paying taxes on the buildings because the buildings are part of the airport land, which is tax exempt. Last week, General Electric also filed for a tax exemption on their property. Senator Goodwin explained that the county has always separated the lease land that is tax exempt to the airport and the property that has been built upon it. However, none of the leases were filed with the Register of Deeds as they should have been according to statute. Therefore, the county does not have any legal documentation on any of the leases. Her amendment provides that the value of the land and improvements may be entered on assessment rolls in separate entries and descriptions for all taxable years after December 31, 1992.

Senator Goodwin moved to amend **HB 2205** as she proposed, seconded by Senator Clark. The motion carried.

Senator Clark moved to report **HB 2205** favorably for passage as amended, seconded by Senator Lee. The motion carried.

The meeting was adjourned at 11:45 a.m.

The next meeting is scheduled for March 25, 2003.

SENATE ASSESSMENT AND TAXATION COMMITTEE  
GUEST LIST

DATE: March 24, 2003

NAME	REPRESENTING
T.C. Anderson	KSCPA
Jim Weisgerber	KDOR
Richard Crum	KDOR
KEN DANIEL	NFIB/KS
Hal Hudson	NFIB/KS
George Pleisen	KTN
Trista Curzydlo	KBA
Deann Williams	KMCA
Ann Burkes	DOB
Martha Jean Smith	KMHA
Chris Wilson	KBIA
Leslie Kaufman	KFB
Mark Carpenter	Kansas Chamber
Phil Devan	KLA
Mike Boam	KLA

AN ACT enacting the Kansas inheritance tax act; repealing K.S.A. 79-15,101 to 125, inclusive, and K.S.A. 79-15,127.

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

Section 1. The provisions of this act shall be known and may be cited as the Kansas inheritance tax act.

Sec. 2. As used in this act, unless the context otherwise requires: (a) Any term used in this act shall have the same meaning as when used in a comparable context in the internal revenue code. Any reference in this act to the "internal revenue code" shall mean the provisions of the United States internal revenue code of 1986, as such code exists on December 31, 1997, unless otherwise specified. Any reference in this act to a specific provision of the internal revenue code shall be to such provision as it exists on December 31, 1997.

(b) "Decedent" includes the testator, intestate, grantor, bargainer, vender or donor.

(c) "Deemed executor" includes any person in actual or constructive possession of any property of the decedent.

(d) "Director" means the director of taxation of the Kansas department of revenue.

(e) "Distributee" means a beneficiary, legatee, devisee, heir, next of kin, grantee, donee, vendee, joint tenant or any other successor in interest, whether outright or in trust.

(f) "Distributive share" or "distributive shares" means the share or shares of the distributive estate passing to a distributee or distributees.

(g) "Domicile" refers to that place where a person resides, has an intention to remain and to which they intent to return following any absence.

(h) "Estate" and "property" mean the real, personal and mixed property or interest therein of the decedent that shall pass or be transferred to a distributee, and shall include all personal property within or without the state.

(i) "Executor" and "administrator" mean the duly appointed, qualified and acting executor or administrator of the decedent in this state.

(j) "Intangible property" means evidence of value, such as certificates of stock, bonds and promissory notes, and includes cash accounts such as certificates of deposit, savings accounts and checking accounts.

(k) "Nonresident decedent" means a decedent other than a resident decedent.

(l) "Personal representative" means the executor or administrator appointed by a Kansas court to serve as such for the estate of the decedent, or the deemed executor.

(m) "Resident decedent" means a person who was domiciled in this state at the time of death. A person who spent in the aggregate more than six months of the calendar year immediately preceding their death within this state shall be presumed to have been a resident for purposes of this act, in the absence of proof to the contrary.

(n) "Secretary" means the secretary of revenue, or the secretary's designee.

(o) "Tax" includes tax, penalty and interest, unless the context of a particular section otherwise requires.

(p) "Tax situs" relates to location of property for the purpose of imposing tax. Real estate or tangible personal property reflected in the Kansas gross estate shall be

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considered to have a tax situs within Kansas if, at the time of the decedent's death, the property was physically located within the state of Kansas. Oil and gas leases on lands in this state and all interests created thereby, or arising therefrom, shall be considered as tangible personal property having an actual situs in this state. Intangible property reflected in the Kansas gross estate, including moneys on deposit with financial institutions, shall be presumed to have a tax situs within Kansas if the decedent was a resident decedent at the time of death.

(q) "Transfer" includes the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, legacy, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed.

Sec. 3. Distributees of estates shall be classified as follows: (a) Class A shall consist of the lineal ancestors, lineal descendants, step-parents, step-children, adopted children, lineal descendants of any adopted child or step-child, the spouse or surviving spouse of a son or daughter, or the spouse or surviving spouse of an adopted child or step-child of the decedent. In the case of an adopted child or step-child, a spouse or surviving spouse of an adopted child or step-child or the lineal descendant of an adopted child or step-child of the decedent, such person shall file with the department of revenue an affidavit setting forth the relationship of such person to the decedent. Such affidavit shall be sufficient proof of the adoptive or step-child relationship in question, and the department, or any officer or employee thereof, shall not require any additional proof of such relationship. As used in this paragraph, "step-child" means a child of a spouse or former spouse of the decedent.

(b) Class B shall consist of the brothers and sisters of the decedent.

(c) Class C shall consist of relatives of all degrees of consanguinity, except those included in classes A and B, and shall also include strangers in the blood of the decedent.

Sec. 4. (a) From the value of the shares of the distributable estate, as ascertained under the provisions of this act and succeeded to by the several distributees, deductions shall allowed as follows: (a) To each member of class A, an amount equal to their distributive share; (b) to each member of class B, an amount equal to their distributive share; and (c) to each member of class C, \$0.

(b) When one or more of the shares of the distributive estate shall consist of property within and property without the state, the deduction allowed in subsection (a) shall be multiplied by a percentage determined by dividing the value of all property included in the distributive share which is within the jurisdiction of the state of Kansas by the value of all property included in the distributive share.

Sec. 5. (a) A tax is hereby imposed on the privilege of succeeding to the ownership of any property, corporeal or incorporeal, and of any interest therein within the jurisdiction of this state.

(b) The tax shall be equal to a percentage of the value of the shares of the distributable estate of the decedent succeeded to by the distributees thereof, and shall be charged upon the value of the distributive shares after deduction of the amounts provided in section 4, and amendments thereto.

(c) The tax shall be imposed as follows:

- (1) Upon the value of shares succeeded to by members of class A: None
- (2) upon the value of shares succeeded to by members of class B: None; and
- (3) upon the value of shares succeeded to by members of class C: On any amount up to \$100,000, 10%; on any amount in excess of \$100,000 and up to \$200,000, 12%; on all sums in excess of \$200,000, 15%.

Sec. 6. A distributive share passing to or for the benefit the surviving spouse of a decedent shall be exempt from the tax imposed by section 5, and amendments thereto.

Sec. 7. (a) A distributive share passing to or for the use of any charitable organization, shall be exempt from tax imposed by section 5, and amendments thereto.

(b) For purposes of this section, charitable organization shall mean those corporations, organizations, associations, societies, institutions, foundations, governmental units or agencies described in 26 U.S.C. 2055(a).

Sec. 8. All property transferred by a decedent to any person described in class A, providing the same was transferred to such decedent not more than five years prior to such decedent's death by another decedent described in class A with respect to the decedent, shall be valued as of the date of death of the second decedent and shall be exempt from the tax imposed by section 5, and amendments thereto, to the extent such value was taxed and the tax paid thereon in the estate of the first decedent.

Sec. 9. When provision is made by any will or other instrument for payment of the legacy or succession tax upon any gift thereby made out of any property other than that so given, no tax shall be chargeable upon any money to be applied in payment of such tax.

Sec. 10. (a) The tax imposed by this act in respect to personal property of nonresidents (other than tangible personal property having an actual situs in this state) shall not be payable if, at the time of death (1) the decedent was a resident of a state or territory of the United States which did not impose a transfer tax or death tax of any character in respect to personal property of residents of the state of Kansas (other than tangible personal property having an actual situs in such state or territory), or (2) the laws of the state or territory of residence of the decedent contained a reciprocal provision under which Kansas residents would be exempted from transfer taxes or death taxes of every character in respect to personal property (other than tangible personal property having an actual situs therein) provided the state of Kansas allowed a similar exemption to residents of the state or territory of residence of such decedent.

(b) In no case shall the provisions of this section apply to the intangible personal property of nonresident decedents unless such intangible personal property shall have been subjected to a tax or submitted for purposes of taxation in the state of the decedent's residence. For the purpose of this section the District of Columbia and possessions of the United States shall be considered territories of the United States.

Sec. 11. In addition to the tax imposed upon the distributive shares of the estate

of the decedent by section 5, and amendments thereto, whenever the amount of the tax imposed upon the transfer of the taxable estate of the decedent by section 2001 of the internal revenue code is determined, a tax, equal to the amount of the maximum credit allowed against such tax on the transfer of the taxable estate of the decedent by section 2011 of the internal revenue code is hereby imposed upon the estate of the decedent.

Sec. 12. When the estate shall consist of property with a tax situs in Kansas and property with a tax situs outside Kansas, the tax imposed under section 11, and amendments thereto, shall be multiplied by the percentage determined by dividing the value of all property included in the gross estate which is within the jurisdiction of the state of Kansas by the value of all property included in the gross estate.

Sec. 13. The tax that may be imposed under sections 11 or 12, and amendments thereto, shall be chargeable against the interests of each distributee in proportion to the amount of the shares of the estate received by each.

Sec. 14. (a) If the internal revenue code requires that an estate tax return be filed with respect to the death of a decedent, the gross estate for purposes of this act shall be the gross estate determined for United States estate tax purposes.

(b) If the internal revenue code does not require that an estate tax return be filed with respect to the death of a decedent, the gross estate shall be determined by including, to the extent provided for in sections 17 to 26, and amendments thereto, the value at the time of the decedent's death of all property, real or personal, tangible or intangible, wherever situated.

Sec. 15. (a) Whenever reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property in determining the value of the gross estate.

(b) The value of the gross estate of a decedent shall be determined by valuing the property included in the gross estate at its fair market value as of the time of the decedent's death, unless an election is made under section 16, and amendments thereto. However, if the estate is required to file a federal estate tax return, and an election is made to value property under the provisions of section 2032A of the internal revenue code for federal estate tax purposes, the value of the property determined for federal estate tax purposes shall be used in determining the value of the gross estate for Kansas estate tax purposes.

(c) When any property or interest therein, or income therefrom, to be included in the gross estate shall pass or be limited for the life of another, or for a term of years, or to terminate on the expiration of a certain period, the value of the said life estate, term of years, or period of limitation shall be fixed according to rules and regulations adopted by the secretary. The value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation, from the actual value of the property as determined at the time of death.

Sec. 16. (a) If the personal representative so elects, the value of the gross estate

may be determined by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of within six months after the decedent's death, such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of within six months after the decedent's death, such property shall be valued as of the date six months after the decedent's death.

(3) Any interest or estate that is affected by mere lapse of time shall be included at its value as of the time of death, instead of the later date, with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(b) No deduction under this act shall be allowed for an item if allowance for such item is in effect given by the alternate valuation provided by this section. Wherever in any other section or subsection of this act reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate.

(c) No election may be made under this section with respect to an estate unless such election will decrease (1) the value of the gross estate, and (2) the tax imposed by this act with respect to property includable in the decedent's gross estate.

(d)(1) The election provided for in this section shall be made by the personal representative on the return of tax imposed by this chapter. Such election, once made, shall be irrevocable.

(2) No election may be made under this section if such return is filed more than one year after the time prescribed by law, including extensions, for filing such return.

(e) The property of any estate for which a federal estate tax return is required to be filed shall be valued pursuant to subsection (a) upon the same date as is elected to value the property for federal estate tax purposes under the provisions of section 2032 of the internal revenue code.

Sec. 17. The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of death.

Sec. 18. (a) If the decedent made a transfer, by trust or otherwise, of an interest in any property, or relinquished a power with respect to any property, during the one-year period ending on the date of the decedent's death, and the value of such property, or an interest therein, would have been included in the decedent's gross estate if such transferred interest or relinquished power had been retained by the decedent on the date of death, the value of the gross estate shall include the value of any property, or interest therein, which would have been so included.

(b) Subsections (a) shall not apply to the following:

(1) Any transfer, other than a transfer with respect to a life insurance policy, made during a calendar year to any donee if the decedent was not required by section 6019 of the internal revenue code, other than by reason of section 6019(a)(2) of the internal revenue code, to file any gift tax return for such year with respect to transfers to such donee; and,

(2) any bona fide sale for an adequate and full consideration in money or money's worth.



Sec. 19. The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, except in case of a bona fide sale for an adequate and full consideration in money or money's worth, by trust or otherwise, under which the decedent has retained for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death, (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Sec. 20. (a) The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, except in case of a bona fide sale for an adequate and full consideration in money or money's worth, by trust or otherwise, where the enjoyment thereof was subject at the date of the decedent's death to any change through the exercise of a power, in whatever capacity exercisable, by the decedent alone or by the decedent in conjunction with any other person, without regard to when or from what source the decedent acquired such power, to alter, amend, revoke or terminate.

(b) For purposes of this section, the power to alter, amend, revoke or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, revocation or termination takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interest which would have been excluded from the power if the decedent had lived, and for such purpose, if the notice has not been given or the power has not been exercised on or before the date of the decedent's death, such notice shall be considered to have been given, or the power exercised, on the date of the decedent's death.

Sec. 21. (a) The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement, other than as insurance under policies on the life of the decedent, if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death.

(b) The provisions of subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price there-for contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement, whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit-sharing plan, shall be considered to be contributed by the decedent if made by reason

of the decedent's employment.

Sec. 22. (a) The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth. Where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person. Where any property has been acquired by gift, bequest, devise or inheritance, as a tenancy by the entirety by the decedent and spouse, to the extent of 1/2 of the value thereof, or, where so acquired by the decedent and any other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, the value of decedent's interest herein shall be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

(b) Notwithstanding the provisions of subsection (a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is 1/2 of the value of such qualified joint interest. For purposes of this subsection, the term "qualified joint interest" means any interest in property held by the decedent and the decedent's spouse as tenants by the entirety, or joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

Sec. 23. (a) The value of the gross estate shall include the value of all property:

(1) To the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includable in the decedent's gross estate under sections 18 through 20, and amendments thereto, inclusive. For purposes of this subsection, the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised; and

(2) to the extent of any property with respect to which the decedent by will, or by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includable in the decedent's gross estate under section 18 or 19, and amendments thereto, exercises a power of appointment by creating another power of appointment which under applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or

suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(b) For purposes of subsection (a): (1) The term "general power of appointment" means a power which is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors or the creditors of the decedent's estate, except that:

(A) A power to consume, invade or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent shall not be deemed a general power of appointment; and

(B) in the case of a power of appointment which is exercisable by the decedent only in conjunction with another person:

(i) If the power is not exercisable by the decedent except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment;

(ii) if the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment, with respect to the property subject to the decedent's power, which the person may exercise in such person's own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power; and

(iii) if, after the application of clauses (i) and (ii), the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons, including the decedent, in favor of whom such power is exercisable.

For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person, if it is exercisable in favor of such person, the person's estate, the person's creditors or the creditors of the person's estate.

(2) The lapse of a power of appointment during the life of the individual possessing the power shall be considered a release of such power. The preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts: (A) \$5,000, or (B) 5% of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

Sec. 24. The value of the gross estate shall include the value of all property:

(a) To the extent of the amount receivable by the personal representative as insurance under policies on the life of the decedent; and

(b) to the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at the time of death any of the incidents of ownership exercisable either alone or in

conjunction with any other person. For purposes of this subsection, the term "incident of ownership" includes a reversionary interest, whether arising by the express terms of the policy or other instrument or by operation of law, only if the value of such reversionary interest exceeded 5% of the value of the policy immediately before the death of the decedent. As used in this subsection, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or the decedent's estate, or may be subject to a power of disposition by the decedent. The value of a reversionary interest at any time shall be determined, without regard to the fact of the decedent's death, by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to rules and regulations prescribed by the secretary. In determining the value of a possibility that the policy or proceeds thereof may be subject to power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or the decedent's estate.

Sec. 25. If any one of the transfers, trusts, interests, rights or powers enumerated and described in sections 18 through 20 and 23, and amendments thereto, is made, created, exercised or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

Sec. 26. Except as otherwise specifically provided by law, sections 18 to 25, and amendments thereto, inclusive, shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whenever made, created, arising, existing, exercised, or relinquished.

Sec. 27. The value of the adjusted gross estate of a decedent shall be determined by deducting from the value of the gross estate of said decedent the following:

(a) The value of all property included therein having a tax situs that is not within the jurisdiction of the state of Kansas.

(b) The value of all property included therein which is specifically exempt from inheritance taxation by the laws of this state or the laws of the United States.

(c) Subject to the limitations provided in subsection (c)(1) of section 29, and amendments thereto, the value of any unpaid mortgages on or any indebtedness in respect of property where the value of the decedent's interest in such property, undiminished by such mortgage or indebtedness, is included in the value of the gross estate.

(d) The value of any losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise, in respect of property where the value of the decedent's interest therein, undiminished by such losses is included therein.

Sec. 28. (a) The value of the distributable estate of a decedent shall be determined by deducting from the adjusted gross estate a percentage of the total amount

authorized as deductions pursuant to section 29 and 30, and amendments thereto.

(b) For purposes of section 29, and amendments thereto, the percentage referred to in subsection (a) shall be determined by dividing the value of the adjusted gross estate that is subject to debts by the value of the gross estate that is subject to debts.

(c) For purposes of section 30, and amendments thereto, the percentage referred to in subsection (a) shall be determined by dividing the value of the Kansas gross estate less the value of any deductions allowable under subsection (a), and (b) of section 27, and amendments thereto, by the value of the total gross estate for United States transfer tax purposes.

Sec. 29. (a) For purposes of section 28, and amendments thereto, the value of the distributable estate shall be determined by deducting from the adjusted gross estate such amounts as are allowable by the laws of the jurisdiction, whether within or without the state of Kansas, under which the estate is being administered for:

- (1) Funeral expenses;
- (2) administration expenses; and
- (3) claims against the estate.

(b) Subject to the limitation in subsection (c)(1), there shall be deducted for purposes of determining the value of the distributable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (a), if such property were subject to claims, and such amounts are paid before the expiration of the period of limitation for assessment provided in section 59, and amendments thereto.

(c)(1)(A) The deduction allowed by this section in the case of claims against the estate, unpaid mortgages or any indebtedness, when founded on a promise or agreement, shall be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth, except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 8, and amendments thereto, for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 8, and amendments thereto, if such promise or agreement constituted a bequest.

(B) Any income taxes on income received after the death of the decedent, or property taxes not accrued before the decedent's death or any estate, succession, legacy or inheritance taxes shall not be deductible under this section.

(2) In the case of the amounts described in subsection (a), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the inheritance tax return. For purposes of this section, the term "property subject to claims" means property includable in the gross estate of the decedent which, or the avails of which, would under the applicable law bear the burden of the payment of such deductions in the final adjustment and settlement of the estate, except that the value of the property shall be reduced by the amount of the deduction under section 27, and

amendments thereto, attributable to such property.

Sec. 30. For purposes of section 28, and amendments thereto, there shall be authorized as a deduction in determining the value of the distributable estate of a decedent the amount of federal tax imposed on the transfer of the decedent's federal taxable estate.

Sec. 31. Amounts allowable under subsections (c) and (d) of section 27, and amendments thereto, as a deduction in computing the adjusted gross estate of a decedent, or under section 29, and amendments thereto, as a deduction in computing the distributable estate of a decedent, shall not be allowed as a deduction, or as an offset against the sales price of property in determining gain or loss, in computing the Kansas taxable income of the estate or the Kansas taxable income of any other person, unless there is filed, within the time and in the manner and form prescribed by rules and regulations adopted by the secretary, a statement that the amounts have not been allowed as deductions under subsections (c) and (d) of section 27, and amendments thereto, or section 29, and amendments thereto, and a waiver of the right to have such amounts allowed at any time as deductions under subsections (c) and (d) of section 27, and amendments thereto, or section 29, and amendments thereto. The provisions of this section shall not apply with respect to deductions allowed pursuant to law relating to income in respect of decedents.

Sec. 32. (a) The value of the distributive shares of a decedent's estate shall be determined by allocating to each distributee that portion of the distributable estate to which each succeeds, whether each succeeds to the ownership of their respective share by reason of the provisions of a will, or trust, or under the laws of intestate succession, or as a surviving joint tenant, or by deed, grant or gift, (whether or not made in contemplation of death, or made or intended to take effect in possession or enjoyment after the death of the grantor to any person, absolutely or in trust) or whether the transfer from the decedent to the distributee is made in any other manner recognized under Kansas law.

(b) When any property or interest thereon, or income therefrom, to be distributed to each distributee shall pass or be limited for the life of another, or for a term of years, or to terminate on the expiration of certain period, the value of the life estate, term of years, or period of limitation shall be fixed according to rules and regulations adopted by the secretary. The value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation, from the value of the property included in the distributable estate.

(c) Where the distributive share passing to a charitable organization includes a remainder interest, the present value of such interest shall be determined under rules and regulations to be promulgated by the secretary of revenue, and the holder of the other beneficial interest in the property (unless otherwise exempt) shall be taxable upon the value of the property reduced by the present value of the remainder interest.

Sec. 33. (a) Except as otherwise provided, the personal representative of the estate of every decedent whose death gives rise to a tax liability under the provisions of

this act shall make and file in the office of the director a return on forms prepared and furnished by the secretary.

(b) In those estates in which no executor or administrator has been appointed, the deemed executor shall make and file such return. In the event there is more than one deemed executor, all deemed executors shall be jointly responsible for completing and filing one return reporting all of the assets of the estate except as hereinafter provided.

(c) If, after exercising due diligence, the personal representative making and filing such return is unable to make a complete return as to any part of the gross estate of the decedent, the personal representative shall make and file a return reporting all information as to the estate assets, including a description thereof and the name of any person holding a legal or beneficial interest in the assets, to the best of such personal representative's knowledge.

Sec. 34. Returns made in accordance with the provisions of this act shall be filed within nine months after the date of the decedent's death.

Sec. 35. (a) Upon a showing of good cause the director may grant a reasonable extension of time for filing a return.

(b) A request for an extension of time to file shall be made in the manner and form prescribed by the director. No such extension shall be for more than six months, except in the event of litigation directly involving the estate.

(c) Notwithstanding a grant of an extension of time to file, the taxes shall be due and payable at the same time and in the same manner as if no such extension had been granted.

Sec. 36. All returns, statements or other documents required to be filed under any provision of this act shall be filed with the office of the director of taxation, or at such other place as the secretary may prescribe by rule or regulation.

Sec. 37. (a) Any return, statement or other document required to be made under any provision of this act shall be signed in accordance with forms or rules and regulations prescribed by the secretary.

(b) The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by the individual.

(c) Except as otherwise provided by the secretary, any return, declaration, statement or other document required to be made under any provision of this act shall contain or be verified by a written declaration that it is made under penalties of perjury.

Sec. 38. If any person fails to make a return required by this act or prescribed by rules or regulations thereunder, but consents to disclose all information necessary for the preparation thereof, the director may prepare such return. After such person signs the return, such return may be received by the director as the return of such person.

Sec. 39. (a) The director is authorized to provide with respect to any amount required to be shown on a return, statement or any other document, that if the amount

of such item is other than a whole-dollar amount either:

- (1) The fractional part of a dollar shall be disregarded; or
- (2) the fractional part of a dollar shall be disregarded unless it amounts to \$.50 or more, in which case the amount, determined without regard to the fractional part of a dollar, shall be increased by \$1.

(b) Any person making a return, statement or other document shall be allowed, under regulations prescribed by the secretary, to make such return, statement or other document without regard to subsection (a).

(c) The provisions of this section shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

Sec. 40. (a) All reports and returns required under the provisions of this act shall be preserved for three years and thereafter until the director of taxation orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided in subsection (c), subsection (g) of K.S.A. 17-7511 or 46-1106, and amendments thereto, it shall be unlawful for the director of taxation, or any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the value of any estate or any particulars set forth or disclosed in any report, return, federal return or federal return information required under the provisions of the Kansas estate tax act. It shall be unlawful for the director of taxation, any deputy, agent, clerk or other officer or employee of the department of revenue engaged in the administration of the Kansas estate tax act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Kansas, by any other state or by the United States government or to accept any employment for the purpose of advising, preparing material or data or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Kansas, any other state or by the United States government.

(c) Nothing herein shall be construed to prohibit the publication of statistics, classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection of returns by the attorney general or other legal representatives of the state. Nothing in this section shall prohibit the post auditor from access to all estate tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106, and amendments thereto. Nothing in this section shall be construed to prohibit the disclosure of the taxpayer's name, social security number, last known address and total tax liability, including penalty and interest, from estate tax returns to a debt collection agency contracting with the secretary of revenue pursuant to K.S.A. 75-5140 through 75-5143, and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (d).

(d) Any violation of subsection (b) or (c) shall be a class B nonperson



misdemeanor. If the offender is an officer or employee of the state, such officer or employee shall be dismissed from office.

(e) Notwithstanding the provisions of this section, the secretary of revenue may permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an estate or inheritance tax, or the authorized representative of either, to inspect the estate tax returns made under the provisions of the Kansas estate tax act and the secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in estate tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the Kansas estate tax act, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of the tax laws of such state, the state of Kansas or of the United States.

(f) Notwithstanding the provisions of this section, the estate tax return filed with respect to the estate of a decedent, upon written request, shall be open to inspection by or disclosure to: (1) The personal representative of such decedent's estate; and (2) any heir at law, next of kin or beneficiary under the will of such decedent or a donee or distributee of the decedent's property, but only if the secretary of revenue finds that such heir at law, next of kin, beneficiary, donee or distributee has a material interest which will be affected by information contained therein.

Sec. 41. (a) The taxes imposed under the provisions of this act shall be payable from the assets of the estate or proceeds therefrom, in order, so far as practicable, that each distributive share of the estate shall bear a just and equitable proportion of such taxes unless otherwise directed by the will or trust agreement of the decedent.

Sec. 42. (a) The personal representative of the estate of every decedent who is required to file a return shall collect and pay to the director all of the taxes imposed under this act.

(b) The personal representative, or each personal representative if there is more than one, shall be personally liable for the tax to the extent of the property in the personal representative's actual or constructive possession which has a Kansas tax situs, less any amounts the personal representative is required to pay to third parties who have a legally enforceable claim to the property that has priority under state or federal law over the tax imposed by this act.

(c) A personal representative holding property subject to tax shall deduct the tax therefrom or collect it from the distributee, and the personal representative shall not deliver property or a specific legacy subject to such tax until the personal representative has collected the tax thereon. A personal representative shall collect taxes due upon real property which is subject to tax under the provisions hereof from the heirs or devisees entitled thereto, and the personal representative may be authorized to sell such real property as authorized by this section, if the distributees refuse or neglect to pay said taxes. In the event the distributees entitled to real property of the decedent refuse or neglect to pay the taxes thereon, the district court of the proper county may authorize the personal representative to sell the real property of a decedent for the

payment of such tax in the same manner as it may authorize them to sell real property for the payment of debts.

(d) Whenever a devise or grant of real property is conditioned on the payment of a legacy subject to the taxes imposed by this act, the distributee succeeding to such real property shall deduct the taxes due on such legacy and pay it to the personal representative before paying the legacy. The tax due on such legacy shall remain a lien upon the real property, or the proceeds therefrom in the event of the disposition of such real property, until the same is paid. Payment of the tax due on such legacy may be enforced by the personal representative in the same manner as the payment of the legacy itself could be enforced.

Sec. 43. (a) The tax imposed under the provisions of this act shall be paid at the expiration of nine months after the death of the decedent.

(b) The person required to make the return, without assessment or notice and demand from the director, shall pay such tax to the office of the director of taxation, or at such other place as the secretary may prescribe by rule or regulation.

Sec. 44. (a) If any personal representative fails to file a return or pay the tax if one is due, at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to 1% of the unpaid balance of the tax due for each month or fraction thereof during which such failure continues, not exceeding 24% in the aggregate, plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

(b) If after review of a return the director determines that the underpayment of tax was due to the failure of the personal representative to make a reasonable attempt to comply with the provisions of this act, a penalty shall be imposed in the amount of 25% of the unpaid balance of tax due.

(c) If any personal representative has failed to file a return or has filed an incorrect or insufficient return, and after notice from the director refuses or neglects within 20 days to file a proper return, the director shall determine the value of the taxable estate according to the best available information and assess the tax together with a penalty of 50% of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was originally due to the date of payment.

(d) Any personal representative who, with fraudulent intent, fails to pay any tax or to make, render or sign any return, or to supply any information, within the time required by or under the provisions of this act, shall be assessed a penalty equal to the amount of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was originally due to the date of payment. Such person shall also be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or be imprisoned in the county jail not less than 30 days nor more than one year, or both such fine and imprisonment.

(e) Any personal representative who willfully signs a fraudulent return shall be guilty of a felony, and upon conviction shall be punished by imprisonment for a term not exceeding five years.

(f)(1) Whenever the director determines that the failure of the personal

representative to comply with the provisions of subsection (a), (b) or (c) was due to reasonable causes, the director may waive or reduce any of the penalties upon making a record of the reasons therefor.

(2) No penalty shall be assessed hereunder with respect to any underpayment of estate tax liability reported on any amended return filed by any personal representative who at the time of filing pays such underpayment and where the return is not being examined at the time of filing.

(3) No penalty assessed hereunder shall be collected if the personal representative has had the tax abated on appeal, and any penalty collected upon such tax shall be refunded.

Sec. 45. In the event it becomes necessary for the personal representative to sell, transfer, or dispose of property in order to obtain the funds necessary to satisfy the tax due under the provisions of this act, the district court of the proper county may authorize the personal representative to sell, transfer or dispose of so much of the property of the estate as will enable the personal representative to pay such tax in the same manner as it may authorize an executor to sell, transfer or dispose of such property for the payment of debts.

Sec. 46. As soon as practicable after the return is filed, the director shall make an examination thereof and shall issue final determinations of tax liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto. If the tax found due is less than the amount paid, the excess paid shall be refunded to the personal representative who paid the tax, except that no refund of \$100 or less shall be made. If the tax found due is greater than the amount previously paid, or if a claim for a refund is denied, notice shall be mailed to the person filing the return by registered or certified mail. An order finding additional tax shall be accompanied by a notice and demand for payment. The tax shall be paid within 30 days thereafter, together with interest on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by K.S.A. 74-2438, and amendments thereto. No additional tax shall be assessed for less than \$100.

Sec. 47. Whenever the director has reason to believe that a personal representative may be unwilling or unable to fulfill the requirements of section 34, and amendments thereto, relating to the filing of a return, or of section 43, and amendments thereto, relating to the payment of the tax, or that a distributee receiving property liable for the payment of tax is about to depart from the state or to remove any property which is subject to tax, including proceeds from the sale or disposal of such property, or to conceal themselves or such property, or to transfer, commingle, disburse or otherwise manipulate such property in order to frustrate or preclude the calculation of tax due thereon or collection of tax due therefrom, or to do any other act tending to prejudice, jeopardize or render wholly or partially ineffective the determination or collection of tax unless proceedings be brought without delay, the director shall immediately make an assessment for all such taxes due, noting such finding on the assessment. Thereupon notices of lien may be filed in accordance with section 50, and amendments thereto, or, in the director's discretion, a warrant may be issued for the collection of tax as provided

in section 51, and amendments thereto. Any person liable for tax may within 30 days from the date of filing of such notice of lien or warrant request review in the manner prescribed by K.S.A. 79-3226, and amendments thereto, on the correctness of the jeopardy assessment. If the director finds that in certain cases collection of the tax may be jeopardized by delay, the director, in the exercise of discretion, immediately may issue notice and demand for payment of tax found to be due. In such cases, collection may be stayed by the giving of such security as the director may consider adequate.

Sec. 48. If the personal representative makes written application to the director for determination of the amount of tax and discharge from personal liability therefor, the director, as soon as possible, and in any event within nine months after the making of such application, or, if the application is made before the return is filed, then within nine months after the return is filed, but not after the expiration of the period prescribed for the assessment of tax in section 59, and amendments thereto, shall notify the personal representative of the amount of the tax for which the personal representative is liable. The personal representative, on payment of the amount of which they are notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

Sec. 49.(a) The property of the estate of every decedent whose estate is required to file an estate tax return pursuant to section 33, and amendments thereto, in whatever form of investment it may happen to be, shall be charged with a lien for all taxes, penalties and interest thereon which are or may become due on such property.

(b) Unless the estate tax imposed by this act is sooner paid in full, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction therefor, shall be divested of such lien.

(c) If the taxes imposed under this act are not paid when due, the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 17 through 26, and amendments thereto, to the extent of the value of such property at the time of the decedent's death, shall be personally liable for such tax, except that the provisions of this subsection shall not apply to the trustee of an employee's trust which meets the requirements of section 401(a) of the internal revenue code. Any part of such property transferred by, or transferred by a transferee of such spouse, transferee, trustee, surviving tenant, person in possession or beneficiary to a purchaser or holder of a security interest shall be divested of the lien provided for in subsection (a) and a similar lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

(c) The provisions of section 48, and amendments thereto, relating to discharge of the personal representative from personal liability, shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be

determined to be due, unless such part of the gross estate, or any interest therein, has been transferred to a purchaser or a holder of a security interest, in which case such part, or such interest, shall not be subject to a lien or to any claim or demand for such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees or distributees.

Sec. 50. (a) Whenever the director has reason to believe that any property which is subject to tax, including proceeds from the sale or disposal of such property, may be transferred, commingled, disbursed, concealed within or removed from the state, or otherwise manipulated in order to frustrate or preclude the collection of tax from such property, the director may file against such property written notice of the lien imposed by section 49, and amendments thereto.

(b) A notice of lien shall be filed with the register of deeds in any county where any property subject to tax is located, upon forms prescribed by the secretary. In the event an exact tax liability has been determined, the notice may recite the amount of such liability.

(c) Upon satisfaction of the lien, or upon its release or divestiture in accordance with section 53, and amendments thereto, the director shall issue notice of the release of such lien, on forms prescribed by the director.

Sec. 51. (a) If the personal representative fails to timely pay the taxes imposed by sections 5, or 11, and amendments thereto, the director may enforce the director's lien by the issuance of a warrant under the director's hand and official seal, directed to the sheriff of any county of the state, commanding such sheriff to levy upon and sell the real and personal property of the distributee found within the sheriff's county for the payment of the amount thereof, with the added penalty, interest and the cost of executing the warrant, and to return such warrant to the director and pay to the director the money collected by virtue thereof not more than 60 days from the date of the warrant. The sheriff, within five days after the receipt of the warrant, shall file with the clerk of the district court of the sheriff's county a copy thereof, and thereupon the clerk shall enter in the appearance docket in appropriate columns, the name of the distributee named in the warrant, the amount of the tax or portion thereof and interest for which the warrant is issued and the date such copy is filed. The amount of such warrant docketed shall thereupon become a lien upon the title to, and interest in, the real property of the distributee against whom it is issued in the same manner, as a judgment duly docketed in the office of such clerk. The sheriff shall proceed in the same manner and with like effect as prescribed by law with respect to executions issued against property upon judgments of a court of record and shall be entitled to the same fees for the sheriff's services to be collected in the same manner.

(b) The court in which the warrant is docketed shall have jurisdiction over all subsequent proceedings as fully as though a judgment had been rendered in the court. In the discretion of the director, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the director, and in the execution thereof such officer or employee shall have all the powers conferred by laws upon sheriffs, and the subsequent proceedings thereunder shall be the same as provided where the warrant is issued directly to the sheriff. The distributee shall have the right to redeem

the real estate within a period of 18 months from the date of such sale. If a warrant be returned, unsatisfied in full, the director shall have the same remedies to enforce the claim for taxes as if the state of Kansas had recovered judgment against the distributee for the amount of the tax. No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a levy and sale under any such warrants or upon any execution issued upon any judgment rendered in any action for inheritance taxes. The director shall have the right at any time after the warrant has been returned unsatisfied or satisfied only in part, to issue alias warrants until the full amount of the tax is collected.

Sec. 52. In cases where the tax is due and payable, the director of taxation may bring an action for collection. All actions shall be prosecuted by the attorney for the director in the name of the state, and such actions may be brought in the same courts as other actions for money.

Sec. 53. The lien imposed by section 49, and amendments thereto, shall be divested or released only in accordance with the following provisions:

(a) the lien shall be divested upon the payment of all taxes, penalty and interest due;

(b) the lien shall be divested after 10 years from the date of the decedent's death;

(c) that portion of the decedent's property which is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien;

(d) the lien shall not affect any property after it has been sold or disposed of for value by the executors or administrators in accordance with K.S.A. 59-1410 and 59-1413, and amendments thereto, or otherwise in accordance with law, but in all such cases a lien shall attach to the proceeds realized from any such sale or other disposition for all taxes and interest thereon which are or may be due on such property. Tax due or payable from the proceeds of such sale or disposal of such property shall be collected by the executor in accordance with the provisions of section 41, and amendments thereto, or by the director in accordance with the provisions of section 52, and amendments thereto, or in accordance with the provisions of section 51, and amendments thereto; and

(e) that portion of the decedent's property which must be sold, transferred or disposed of for the payment of taxes against the estate shall be divested of the lien, but only to the extent a specific release of has been granted by the director.

Sec. 54. (a) Whenever the lien imposed by section 49, and amendments thereto, has been released in accordance with the provisions of section 53, and amendments thereto, and the personal representative makes written request for proof of such release, the director shall furnish such personal representative with notice of release. Any such notice of release shall be in such form as prescribed by the director and may include use of or reference to the closing letter issued by the director or may be included as part of that closing letter.

(b) When the notice of release applies to real property, such notice may be filed in the office of the register of deeds in any county where any such real property included

in the gross estate is located or, when the estate is involved in proceedings before the district court, with the court. At the discretion of the director, such notice of release may be filed by the director or may be provided to the personal representative for filing.

Sec. 55. (a) As soon as practicable after the return is filed and the taxes paid, the director shall issue a closing letter. Such closing letter shall be issued to the personal representative upon the director being satisfied that there has been a final determination of all taxes due and that all such taxes have been paid.

(b) The closing letter shall be applicable only to assets reported in the return filed with the director. To the extent the gross assets of the decedent were reported, the issuance of a closing letter shall be conclusive evidence that all taxes have been determined and paid and shall release any lien which attached to the decedent's property, or the property of any personal representative or distributee, unless notice of such lien has been filed under section 50, and amendments thereto.

Sec. 56. The director shall pay to the state treasurer on Monday of each week the entire amount of revenue collected or received during the previous week from the tax imposed by this act less amounts withheld as provided in section 57, and amendments thereto, which amount shall be credited to the state general fund, and shall be applicable to such purposes as the legislature by law may direct.

Sec. 57. There is hereby created the inheritance tax abatement refund fund. Such fund shall not exceed \$50,000 and shall be maintained by the director of taxation from estate tax collection and held by the state treasurer for the prompt payment of all abatements and refunds. If the director of taxation finds that claim for refund duly filed by a personal representative should be allowed, or if a court upon a final judgment shall find that the inheritance tax, penalty or interest paid by any personal representative is in excess of the amount legally due, then the director of taxation shall issue the director's vouchers to the director of accounts and reports for the refund to the personal representative of such tax, penalty or interest together with interest provided for hereinafter. Upon receipt of such voucher properly executed and endorsed, the director of accounts and reports shall issue the director's warrants to the state treasurer for the payment to the personal representative out of the inheritance tax abatement refund fund. The director of taxation shall file a duplicate of such voucher and also a statement which shall set forth the reasons why such abatement or refund was allowed. Upon allowance of an abatement or refund of any tax, penalty or interest paid, interest shall be allowed and paid on the amount of such abatement or refund at the rate prescribed and determined pursuant to K.S.A. 79-2968, and amendments thereto, from the date such tax, penalty or interest was paid to the date the refund or abatement of estate taxes is made.

Sec. 58. (a) The director of taxation shall fix and charge an amount pursuant to K.S.A. 45-218 and 45-219, and amendments thereto, for furnishing certified copies of returns.

(b) All fees collected hereunder shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the

entire amount thereof in the state treasury and the same shall be credited to the state general fund.

Sec. 59. (a) Except as otherwise provided in this section, the amount of any tax imposed by this act shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed, or the tax as shown to be due on such return was paid, whichever is the later date, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period. Where the assessment of any estate tax imposed under this act has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court but only if begun within one year after the period of limitation as provided in this act.

(b) For the purposes of this section, a return of tax required under this act filed before the last day prescribed by law shall be deemed to be filed on such last day and any tax shown to be due on such return and paid before the last day prescribed by law shall be deemed to be paid on such last day.

(c) In the case of a false or fraudulent return with intent to evade tax or in the case of failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun at any time. If the personal representative omits from the gross estate items includable in such gross estate as exceed 25% of the gross estate stated in the return, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time within six years after the return was filed. In determining the items omitted from the gross estate, there shall not be taken into account any item which is omitted from the gross estate if such item is disclosed in the return, in a manner adequate to apprise the director of the nature and amount of such item.

(d) No refund or credit shall be allowed by the director after three years from the date the return was filed, or one year after an assessment is made, whichever is the later date, unless before the expiration of such period a claim therefor is filed by the personal representative.

(e) In case a personal representative has made claim for a refund, such personal representative shall have the right to commence a suit for the recovery of the same at the expiration of six months after the filing of a claim for refund, if no action has been taken by the director.

(f)(1) Any personal representative of an estate of a decedent who has been notified of any adjustment by the internal revenue service shall notify the director within 90 days of the date if such adjustment is agreed to or becomes final between the estate and the internal revenue service. Such adjustments shall be reported by filing an amended return and a copy of the revenue agent's report detailing such adjustments, along with any other statements or documents as may be necessary to explain and support the adjustments.

(2) Notwithstanding the provisions of subsection (a) or (d), additional estate tax may be assessed and proceedings in court for collection of such taxes may be commenced and any refund or credit may be allowed by the director of taxation within 180 days following receipt of any such report of adjustments by the Kansas department of revenue. No assessment shall be made nor any refund or credit shall be allowed



under the provisions of this paragraph except to the extent the same is attributable to changes in the estate due to the adjustments indicated by such report.

(3) In the event of failure to comply with the provisions of this subsection, the statute of limitations shall be tolled.

Sec. 60. The secretary of revenue shall adopt such rules and regulations as may be deemed necessary to carry out the purposes of this act.

Sec. 61. The provisions of this act shall apply to the estates of all decedents dying after December 31, 2002. The provisions of article 15 of chapter 79, as such provisions existed prior to July 1, 2003, other than K.S.A. 2002 Supp. 79-15,127, shall be applicable to the estates of all decedents dying before January 1, 2003.

Sec. 62. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section.

Sec. 63. Any tax liability for tax imposed pursuant to K.S.A. 2002 Supp. 79-15,127 that may have accrued prior to the effective date of this act is hereby abolished. Any such tax paid shall be refunded to the taxpayer pursuant to the procedure prescribed by this section. Each claim for a tax refund shall be verified and submitted to the director of taxation upon forms furnished by the director and shall be accompanied by any additional documentation required by the director. The director shall review each claim and shall refund that amount of tax paid. All refunds shall be paid from the inheritance or succession tax refund fund, which is hereby created, upon warrants of the director of accounts and reports pursuant to vouchers approved by the director or the director's designee.

Sec. 64. K.S.A. 2002 Supp. 79-15,100, 79-15,101, 79-15,102, 79-15,103, 79-15,105, 79-15,106, 79-15,107, 79-15,108, 79-15,109, 79-15,111, 79-15,112, 79-15,113, 79-15,114, 79-15,115, 79-15,116, 79-15,117, 79-15,118, 79-15,119, 79-15,125 and 79-15,127 are hereby repealed.

Sec. 65. This act shall take effect and be in force from and after its publication in the statute book.

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AN ACT concerning the Kansas withholding tax act; amending K.S.A. . 79-3295, 79-3298, 79-3299, 79-32,100, 79-32,100a, 79-32,100b and 79-32,100c and repealing the existing sections.

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

Section 1. K.S.A. 79-3295 is hereby amended to read as follows: 79-3295. (a) The term “employee” means a resident of this state as defined by subsection (b) of K.S.A. 79-32,109, and amendments thereto, performing services for an employer either within or without the state and a nonresident performing services within this state, and includes an officer, employee or elected official of the United States, a state, territory, or any political subdivision thereof or any agency or instrumentality thereof, and an officer of a corporation.

(b) The term “employer” means any person, firm, partnership, limited liability compamy, corporation, association, trust or fiduciary of any kind or other type organization qualifying as an employer for federal income tax withholding purposes and who maintains an office, transacts business in or derives any income from sources within the state of Kansas for whom an individual performs or performed any services, of whatever nature, as the employee of such employer, and who has control of the payment of wages for such services, or is the officer, agent or employee of the person having control of the payment of wages. It also includes the United States, the state and all political subdivisions thereof, and all agencies or instrumentalities of any of them.

(c) The term “nonresident” means an individual domiciled outside this State and an entity whose commercial domicile is outside of this State. For corporations, commercial domicile is defined in K.S.A. 79-3271, and amendments thereto. This definition does not apply to New Section 9.

(d) The term “payee” means any person or organization who receives a payment other than wages, or a payment of a pension, annuity or deferred income, which is subject to withholding of income tax pursuant to this act.

(e) The term “payer” means any person or organization, other than an employer, who makes a payment other than wages, or a payment of a pension, annuity or deferred income, which is subject to withholding of income tax pursuant to this act.

(f) The term “payment other than wages” means a payment that is taxable under the Kansas income tax act, and that is a payment:

- (1) for any supplemental unemployment compensation, annuity, or sick pay;
- (2) pursuant to a voluntary withholding agreement;
- (3) of gambling winnings;
- (4) of taxable payments of Indian casino profits;
- (5) for any vehicle fringe benefit;

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(g) The term "pension, annuity or other deferred income" means a payment that is taxable under the Kansas income tax act, and that is a payment:

(1) of periodic payments of pensions, annuities, and other deferred income;

(2) of nonperiodic distributions of pensions, annuities, and other deferred income;

or

(3) of eligible rollover distributions of pensions, annuities, and other deferred income.

(h)-The term "wages" means wages as defined by section 3401(a) of the federal internal revenue code which are taxable under the Kansas income tax act, .

Sec. 2. K.S.A. 79-3298 is hereby amended to read as follows: 79-3298. (a) Every employer payer, person or organization deducting and withholding tax shall remit the taxes and file returns in accordance with the following provisions. (1) Whenever the total amount withheld exceeds \$100,000 in any calendar year, the employer payer, person or organization deducting and withholding tax shall remit the taxes withheld in accordance with the following schedule: Each calendar month shall be divided into four remittance periods that end on the 7th, 15th, 21st and last day of such month. If at the end of any one or all of such remittance periods the total undeposited taxes equal or exceed \$667, the taxes shall be remitted within three banking days. Saturdays, Sundays and legal holidays shall not be treated as banking days. (2) Whenever the total amount withheld exceeds \$8,000 but does not exceed \$100,000 in any calendar year, the employer payer, person or organization deducting and withholding tax shall remit the taxes withheld for wages paid during the first 15 days of any month on or before the 25th day of that month. The employer payer, person or organization deducting and withholding tax shall remit the taxes withheld for wages paid during the remainder of that month on or before the 10th day of the following month. (3) Whenever the total amount withheld exceeds \$1,200 but does not exceed \$8,000 in any calendar year, the employer payer, person or organization deducting and withholding tax shall remit the taxes withheld during any month on or before the 15th day of the following month. (4) Whenever the total amount withheld exceeds \$200 but does not exceed \$1,200 in any calendar year, the employer payer, person or organization deducting and withholding tax shall remit the taxes withheld in any calendar quarter on or before the 25th day of the first month following the end of that calendar quarter. (5) Whenever the total amount withheld does not exceed \$200 in any calendar year, the employer shall remit the taxes withheld during that year on or before January 25 of the following year.

(b) Each remittance required under the provisions of subsection (a) shall be accompanied by a Kansas withholding tax remittance form prescribed and furnished by the director.

(c) Every employer payer, person or organization deducting and withholding tax and making remittances pursuant to subsection (a) shall file a return on a form prescribed and furnished by the director for each calendar year on or before the last day of February of the following year.

(d) The excess of any remittance over the actual taxes withheld in any withholding period shall be credited against the liability for following withholding periods until exhausted. A refund shall be allowed in accordance with K.S.A. 79-32,105, and

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amendments thereto, where an overpayment cannot be adjusted by an offset against the liability for a subsequent withholding period.

(e) For purposes of determining filing requirements, determinations of amounts withheld during a calendar year by employers payers, person or organization deducting and withholding tax shall be made by the director upon the basis of amounts withheld by those employers payers, persons or organizations during the preceding calendar year or by estimates in cases of employers payers, persons or organizations having no previous withholding histories. The director is hereby authorized to modify the filing schedule for any employer payer, person or organization deducting and withholding tax when it is apparent that the original determination was inaccurate.

(f) Whenever the director has cause to believe that money withheld by an employer payer, person or organization deducting and withholding tax pursuant to this act may be converted, diverted, lost, or otherwise not timely paid in accordance with this section, the director shall have the power to require returns and payment from any such employer payer, person or organization at any time at more frequent intervals than prescribed by this section in order to secure full payment to the state of all amounts withheld by such employer payer, person or organization in accordance with this act.

Sec. 3. K.S.A. 79-3299 is hereby amended to read as follows: 79-3299. (a) Every employer payer, person or organization deducting and withholding tax shall, on or before January 31 of each year prepare a statement for each employee or payee on a form prescribed by the director stating the amount of wages or payments other than wages subject to Kansas income tax paid during the preceding year, the total amount of tax withheld, if any, from such wages or payments other than wages by the employer payer, person or organization pursuant to this act and such other information as may be prescribed by the director. One copy of such statement shall be filed by the employer payer, person or organization with the division of taxation on or before the last day of February of each year. Two copies of such statement shall be given to the employee or payee concerned, one of which will be filed by the employee or payee with the tax return required by this chapter.

(b) In the case of an employee whose employment is terminated before the end of a calendar year, the statement required by subsection (a) may be mailed at the time provided in that subsection to the last known address of the employee, or issued at the time of the last payment to the employee, at the employer's option.

(c) Any employer payer, person or organization deducting and withholding tax who willfully fails to furnish a statement to an employee or payee as required under the provisions of subsections (a) and (b) of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$100 for each such offense.

(d) The annual statement of wages and salaries paid and amount withheld required by this section shall be in lieu of the annual information return required under K.S.A. 79-3222.

Sec. 4. K.S.A. 79-32,100 is hereby amended to read as follows: 79-32,100. (a) The tax deducted and withheld under this act shall not be allowed as a deduction to the

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employer payer, person or organization deducting and withholding tax or to the employee or payee in computing taxable income under the “Kansas income tax act”.

(b) The full amount of wages and salaries or payments other than wages from which an amount was withheld in accordance with this act shall be included in the gross income of the employee or payee unless such wages and salaries or payments other than wages or a portion thereof are otherwise excludable under the provisions of the “Kansas income tax act”.

(c) The amount deducted and withheld under this act during any calendar year from the wages or payments other than wages of an individual taxpayer shall be allowed as a credit against the income tax otherwise imposed on such taxpayer by the “Kansas income tax act,” whether or not such amount was remitted to the division of taxation by the employer payer, person or organization deducting and withholding tax in accordance with the terms of this act.

(d) If the amount withheld under this act during any calendar year exceeds the individual income tax liability of the employee-payee-taxpayer any excess shall be applied to any other income tax owed the state of Kansas by such individual (including fines, penalties and interest, if any) and the balance of such excess, if any, refunded to the taxpayer as provided in subsection (c) of K.S.A. 79-32,105, and amendments thereto.

Sec. 5. K.S.A. 79-32,100a is hereby amended to read as follows: 79-32,100a. (a) Every payer who is required under federal law to withhold upon payments other than wages as defined by K.S.A. 79-3295, and amendments thereto, shall deduct and withhold an amount to be determined in accordance with K.S.A. 79-32,100d, and amendments thereto, .

(b) A determination by the internal revenue service that relieves a payer from withholding responsibility with respect to payments other than wages to a payee shall also apply for Kansas income tax withholding purposes. Whenever a payer is required to reinstate withholding for federal income tax with regard to any payee, such obligation shall be equally applicable for Kansas withholding purposes.

(c) Every payer who is required under federal law to withhold upon payments of a pension, annuity, or other deferred income, as defined by K.S.A. 79-3295, and amendments thereto, shall deduct and withhold an amount to be determined in accordance with K.S.A. 79-32,100d, and amendments thereto, whenever the payee is a resident of the state to Kansas.

New Sec. 6. (a) A person or organization distributing cash or non-cash prizes or winnings valued at six hundred dollars or more to a resident or nonresident shall deduct and withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from each distribution.

(b) When withholding on noncash prizes, the person or organization distributing the prize may either (1) accept cash from the prize recipient for the amount of the withholding or (2) pay all taxes required to be withheld. If the person or organization distributing the prize pays the taxes, the withholding also becomes income for the prize recipient and the amount to be withheld is calculated as follows: the fair market value of the prize is divided by the difference after

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subtracting the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from 1, and the quotient is multiplied by the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto.

New Sec. 7. A person or organization, in the ordinary course of a trade, business or other for profit venture, making rent or royalty payments of six hundred dollars or more in any calendar year for the use or privilege of using property in this state shall deduct and withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from each payment to a nonresident individual, partnership, trust, estate, corporation or any other nonresident entity.

New Sec. 8. (a) A person or organization, in the ordinary course of a trade, business or other for profit venture, hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within this State shall deduct and withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from each payment in which the Kansas portion of the contract exceeds or could reasonably be expected to exceed ten thousand dollars.

(b) This section does not apply to payments on purchase orders for tangible personal property when those payments are not accompanied by services to be performed in this State.

New Sec. 9. (a)(1) A person or organization who purchases real property, or real property and associated tangible personal property, from a nonresident seller shall withhold:

(A) tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from the gain recognized on the sale by a nonresident individual, partnership, trust, estate, corporation or other nonresident entity if the seller provides the buyer with an affidavit, described in subsection (e), stating the amount of gain;

(B) tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from the amount realized on the sale for a nonresident individual, partnership, trust, estate, corporation or any other nonresident entity if the seller does not provide the buyer with an affidavit described in subsection (e); or

(C) the entire net proceeds payable to the nonresident seller, if the amount required to be withheld in clause (1) or (2) exceeds the net proceeds payable to the seller.

(2) If a seller finances all or part of the transaction, in lieu of remitting the tax due on each installment payment, the seller may give the buyer an affidavit stating that, for state income tax purposes, he or she will elect out of installment sales treatment, as defined by Section 453 of the Internal Revenue Code, and remit the entire amount of tax to be due over the period of the installment agreement.

(b)(1) For purposes of this section a sale is a transfer where gain or loss is computed in accordance with Section 1001 of the internal revenue code with modifications provided in the Kansas income tax act.

(2) A sale does not include tax exempt or tax deferred transactions, other than installment sales.

(3) The department may exempt certain other classes of transactions from the provisions of this section when it determines that the benefits to the State are insufficient to justify the burdens

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imposed on the buyer and seller.

(c)(1) For purposes of this section, a nonresident is:

(A) an individual whose permanent home is outside of this State on the date of the sale;

(B) a corporation incorporated outside of this State;

(C) a partnership whose principal place of business is located outside of this State;

(D) a trust administered outside of this State; or

(E) an estate of a decedent whose permanent home was outside of this State at the time of death.

(2) However, a nonresident seller is considered a resident for purposes of this section if:

(A)(i) the seller is a corporation incorporated outside of this State that has its principal place of business in this State and does no business in its state of incorporation; or

(ii) the seller is a nonresident who:

(I) has filed at least one Kansas income tax return and is not delinquent with respect to filing Kansas income tax returns;

(II) has been in business in this State during the last two taxable years, including the year of sale, and shall continue in substantially the same business in the State after the sale; and

(III) has a certificate of authority to do business in this State if the seller is a corporation or is registered to do business in this State if the seller is a limited partnership.

(B) the seller provides the buyer an affidavit described in subsection (e) certifying that the above requirements are met and that the seller shall report the sale on a timely filed Kansas income tax return.

(d)(1) The buyer shall remit the amount withheld to the department with the appropriate form on or before the fifteenth day of the month following the month in which the sale takes place. However, the department may extend the time for withholding and remitting payments for seller financed sales.

(2) The buyer is liable for the collection and payment of an amount due pursuant to this section. The lending institution, real estate agent, and closing attorney are not liable for the collection of an amount due from the buyer pursuant to this section.

(e) The buyer may rely on an affidavit provided by the seller if the buyer does not know the affidavit is false and the seller, under penalties of perjury, states the following:

(1) the seller's name, address, and social security or other federal tax identification number;

(2) the date of the sale; and

(3) a description of the property.

(f) The secretary shall prescribe rules and regulations necessary to enforce and administer the provisions of this section.

New Sec. 10. (a) Corporations for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect are required to deduct and withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from a nonresident shareholder's share of Kansas taxable income of the corporation, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the corporation shall make a return and pay over the withheld funds on or before the due date of the S corporation's income tax return, including extensions. Taxes withheld in the name of the nonresident shareholder must be used as credit against taxes due at the time the nonresident files

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a return of income or other applicable information return for the taxable year.

(b) An S corporation required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The S corporation shall furnish to each nonresident shareholder a written statement as required by K.S.A. 79-3299, and amendments thereto as proof of the amount of his or her share of distributed or undistributed income and of the amount that has been withheld.

(c) Partnerships are required to withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from a nonresident partner's share of Kansas taxable income of the partnership, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the partnership shall make a return and pay over the withheld funds on or before the due date of the partnership's income tax return, including extensions. Taxes withheld in the name of the nonresident partner must be used as credit against taxes due at the time the nonresident files a return of tax or other applicable information return for the taxable year.

(d) A partnership required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The partnership shall furnish to each nonresident shareholder a written statement as required by K.S.A. 79-3299, and amendments thereto, as proof of the amount of his or her share of distributed or undistributed income that has been withheld.

(e) Limited liability companies are required to withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to K.S.A. 79-32,110(a), and amendments thereto, from a nonresident member's share of Kansas taxable income of the limited liability company, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the limited liability company shall make a return and pay over the withheld funds on or before the due date of the limited liabilities income tax return, including extensions. Taxes withheld in the name of the nonresident member must be used as credit against taxes due at the time the nonresident files a return of tax or other applicable information return for the taxable year.

(f) A limited liability company required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The limited liability company shall furnish to each nonresident member a written statement as required by K.S.A. 79-3299, and amendments thereto, as proof of the amount of his or her share of distributed or undistributed income that has been withheld.

(g) If a nonresident shareholder partner or member provides the S corporation, partnership or limited liability company with a statement that the shareholder or partner is an organization exempt from income taxes under Section 501(a) of the internal revenue code, then the S corporation, partnership or limited liability company is not required to withhold with regard to that shareholder, partner or member. The statement must contain the shareholder's partner's or members name, federal identification number, Internal Revenue Code section exemption number, and a copy of the Internal Revenue Service exemption letter.



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(h)(1) For purposes of computing the penalty under K.S.A. 79-32,107, and amendments thereto, the amount withheld is deemed a payment of estimated tax, and an equal part of the amount is deemed paid on each estimated tax due date for the previous taxable year.

(2) If an S corporation, partnership or limited liability company is subject to withholding on the sale of real property pursuant to New Section 9, the S corporation, partnership or limited liability company is exempt from withholding on income attributable to the sale under this section.

(3) If a nonresident shareholder, partner or member files an affidavit with the department in a form acceptable to the department by which he or she agrees that he or she is subject to the personal jurisdiction of the department and courts of this State for the purpose of determining and collecting any Kansas taxes, including estimated taxes, together with any related interest and penalties, then the S corporation, partnership or limited liability company is not required to withhold with regard to that shareholder, partner or member. The department may revoke an exemption granted by this subsection at any time it determines that the nonresident shareholder, partner, or member is not abiding by its terms.

(i) The department is authorized to require such returns and other information as it considers appropriate to administer the provisions of this section, and to issue rulings and promulgate regulations as necessary or appropriate to implement this section.

(j) The director of taxation may allow a nonresident individual shareholder, partner or member to not file a Kansas income tax return if the nonresident individual shareholder's, partner's or member's only source of Kansas income was his or her share of the S corporation's, partnership's or limited liability company's income which was derived from or attributable to sources within this state, and the S corporation, partnership or limited liability company has remitted the amount required by subsections (a), (c) or (e) on behalf of such nonresident shareholder, partner or member. The amount remitted shall be retained in satisfaction of the Kansas income tax liability of the nonresident individual shareholder, partner or member.

New Sec. 11. (a) A payer and payee may enter into an agreement to withhold income tax from any type of payment not otherwise provided in the withholding tax act that is includable in Kansas gross income. The agreement is effective for a mutually agreed upon period unless the payer or payee furnishes a signed written notice to the other party terminating the agreement.

(b) A properly executed withholding exemption certificate furnished by the payee to the payer constitutes a request for withholding. The amount to be withheld must be determined in accordance with K.S.A. 79-32,100d, and amendments thereto.

Sec. 12. K.S.A. 79-32,100b is hereby amended to read as follows: 79-32,100b.  
(a) Every employer payer, person or organization required to deduct and withhold tax from wages of an employee or payments other than wages of a payee under this act shall be liable for the payment of such tax whether or not it is collected from the employee or payee by the employer payer, person or organization. For purposes of assessment and collection, any amount required to be withheld and paid over to the department of revenue, and any additions to tax, penalties and interest with respect thereto, shall be considered the tax of the employer.

(b) Any amount of tax withheld shall constitute a special fund in trust for the department of revenue.

(c) No employee or payee shall have any right of action against their employer

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payer, person or organization deducting and withholding tax in respect to any monies deducted and withheld from wages or payments other than wages and paid over to the department of revenue in compliance or in intended compliance with this act.

Sec. 13. K.S.A. 79-32,100c is hereby amended to read as follows: 79-32,100c. (a) If an employer payer, person or organization deducting and withholding tax fails to deduct and withhold the tax as required under this act, and thereafter, the income tax against which the tax may be credited it paid, the tax required to be deducted and withheld shall not be collected from the employer payer, person or organization. The payment of such tax does not, however, operate to relieve the employer, payer, person or organization from liability for penalties, interest or additions to the tax applicable with respect to such failure to deduct and withhold. The employer payer, person or organization will not be relieved under this provision from liability for payment of the tax required to be withheld unless it can be shown that the income tax against which the tax required to be withheld under this act may be credited has been paid.

(b) Every agent or other person having control, receipt, custody or disposal of, or paying the wages of an employee or group of employees employed by one or more employers, is for the purpose of this act designated to be an employer. In the case of the corporation, the officers and board of directors are likewise considered employers. Employers of classes named in this section shall be subject to all the provisions of law including penalties as is their principal. Any employer, who willfully fails to collect the tax imposed by the Kansas withholding tax act or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any tax or the payment thereof, shall be subject to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over in addition to other penalties provided by law.

Sec. 14. The provisions of this act shall be part of and supplemental to the Kansas withholding and declaration of estimated tax act, K.S.A. 79-3294 *et seq.* and amendments thereto.

Sec. 15. K.S.A. 79-3295, 79-3298, 79-3299, 79-32,100, 79-32,100a, 79-32,100b and 79-32,100c are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.

AN ACT concerning property taxation; relating to exemptions therefrom; amending K.S.A. 79-201q, K.S.A. 79-201s and K.S.A. 2002 Supp. 79-213 and repealing the existing sections.

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

Section 1. K.S.A. 79-201q is hereby amended to read as follows. K.S.A. 79-201q. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

(a) (1) All property owned and primarily operated as an airport by a political subdivision, including property leased by the political subdivision for purposes not essential to the operation of an airport, for all taxable years commencing before January 1, 1993.

(2) For all taxable years commencing after December 31, 1992, all property owned and primarily operated as an airport by a political subdivision, including property leased by the political subdivision for purposes essential to the operation of an airport. Payments in lieu of property taxes may be required for any or all of such years for such leased property, and such payments shall be apportioned and distributed in the same manner as general property taxes.

(b) If the term of any lease existing on April 15, 1991, of any such property for purposes not essential to the operation of an airport extends beyond tax year 1992, the expiration date of the exemption provided by subsection (a) shall be the tax year next following the tax year during which such lease expires. Payments in lieu of taxes may be required for taxable years commencing after December 31, 1992, for any such property for the duration of any such lease, and all such payments shall be apportioned and distributed in the same manner as general property taxes.

(c) Nothing in this section shall be deemed to apply to or limit the operation of K.S.A. 27-319, 27-330 or 79-201a Second, and amendments thereto.

(d) All property taxes, including any penalties and interest accrued thereon, imposed upon any property described in subsection (a) and (b) for all taxable years to which such subsections apply are hereby declared to be cancelled but any such amounts paid in any such year shall not be refunded except that with respect to Liberal municipal airport such amounts shall be refunded.

**(e) The county or district appraiser shall value the land and improvements, and the value of the land and improvements may be entered on the assessment rolls in separate entries and descriptions. The provision of this subsection shall be applicable to all taxable years commencing after December 31, 1992.**

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Attachment 3

- Sec. 2. K.S.A. 79-201s is hereby amended to read as follows. K.S.A. 79-201s.
- (a) For all taxable years commencing after December 31, 1991, all property owned and primarily operated as an airport by an airport authority established under K.S.A. 3-162 *et seq.*, and amendments thereto, including property leased by the airport authority for aviation related purposes, shall be exempt from all property or ad valorem taxes levied under the laws of this state. If the term of any lease existing on April 15, 1991, of any property for purposes not aviation related extends beyond tax year 1991, such property shall be exempt from all property or ad valorem taxes levied under the laws of this state until the tax year next following the tax year during which such lease expires.
  - (b) All property or ad valorem taxes, including any penalties and interest accrued thereon, imposed upon any property described by subsection (a) for all taxable years commencing prior to January 1, 1992, are hereby declared to be cancelled.
  - (c) The county or district appraiser shall value the land and improvements, and the value of the land and improvements may be entered on the assessment rolls in separate entries and descriptions. The provision of this subsection shall be applicable to all taxable years commencing after December 31, 1991.**

- Sec. 3. K.S.A. 2002 Supp. 79-213 is hereby amended as follows: K.S.A. 79-213.
- (a) Any property owner requesting an exemption from the payment of ad valorem property taxes assessed, or to be assessed, against their property shall be required to file an initial request for exemption, on forms approved by the board of tax appeals and provided by the county appraiser.
  - (b) The initial exemption request shall identify the property for which the exemption is requested and state, in detail, the legal and factual basis for the exemption claimed.
  - (c) The request for exemption shall be filed with the county appraiser of the county where such property is principally located.
  - (d) After a review of the exemption request, and after a preliminary examination of the facts as alleged, the county appraiser shall recommend that the exemption request either be granted or denied, and, if necessary, that a hearing be held. If a denial is recommended, a statement of the controlling facts and law relied upon shall be included on the form.
  - (e) The county appraiser, after making such written recommendation, shall file the request for exemption and the recommendations of the county appraiser with the board of tax appeals.
  - (f) Upon receipt of the request for exemption, the board shall docket the same and notify the applicant and the county appraiser of such fact.
  - (g) After examination of the request for exemption, and the county appraiser's recommendation related thereto, the board may fix a time and place for hearing, and shall notify the applicant and the county appraiser of the time and place so fixed. A request for exemption pursuant to: (1) Section 13 of article 11 of the Kansas constitution; or (2) K.S.A. 79-201a *Second*, and amendments thereto, for

property constructed or purchased, in whole or in part, with the proceeds of revenue bonds under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, prepared in accordance with instructions and assistance which shall be provided by the department of commerce and housing, shall be deemed approved unless scheduled for hearing within 30 days after the date of receipt of all required information and data relating to the request for exemption, and such hearing shall be conducted within 90 days after such date. Such time periods shall be determined without regard to any extension or continuance allowed to either party to such request. In any case where a party to such request for exemption requests a hearing thereon, the same shall be granted. Hearings shall be conducted in accordance with the provisions of the Kansas administrative procedure act. In all instances where the board sets a request for exemption for hearing, the county shall be represented by its county attorney or county counselor.

(h) Except as otherwise provided by subsection (g), in the event of a hearing, the same shall be originally set not later than 90 days after the filing of the request for exemption with the board.

(i) During the pendency of a request for exemption, no person, firm, unincorporated association, company or corporation charged with real estate or personal property taxes pursuant to K.S.A. 79-2004 and 79-2004a, and amendments thereto, on the tax books in the hands of the county treasurer shall be required to pay the tax from the date the request is filed with the county appraiser until the expiration of 30 days after the board issued its order thereon and the same becomes a final order. In the event that taxes have been assessed against the subject property, no interest shall accrue on any unpaid tax for the year or years in question nor shall the unpaid tax be considered delinquent from the date the request is filed with the county appraiser until the expiration of 30 days after the board issued its order thereon. In the event the board determines an application for exemption is without merit and filed in bad faith to delay the due date of the tax, the tax shall be considered delinquent as of the date the tax would have been due pursuant to K.S.A. 79-2004 and 79-2004a, and amendments thereto, and interest shall accrue as prescribed therein.

(j) In the event the board grants the initial request for exemption, the same shall be effective beginning with the date of first exempt use except that, with respect to property the construction of which commenced not to exceed 24 months prior to the date of first exempt use, the same shall be effective beginning with the date of commencement of construction.

(k) In conjunction with its authority to grant exemptions, the board shall have the authority to abate all unpaid taxes that have accrued from and since the effective date of the exemption. In the event that taxes have been paid during the period where the subject property has been determined to be exempt, the board shall have the authority to order a refund of taxes for the year immediately preceding the year in which the exemption application is filed in accordance with subsection (a) a period not to exceed three years.

(1) The provisions of this section shall not apply to: (1) Farm machinery and equipment exempted from ad valorem taxation by K.S.A. 79-201j, and amendments thereto; (2) personal property exempted from ad valorem taxation by K.S.A. 79-215, and amendments thereto; (3) wearing apparel, household goods and personal effects exempted from ad valorem taxation by K.S.A. 79-201c, and amendments thereto; (4) livestock; (5) hay and silage exempted from ad valorem taxation by K.S.A. 79-201d, and amendments thereto; (6) merchants' and manufacturers' inventories exempted from ad valorem taxation by K.S.A. 79-201m and amendments thereto; (7) grain exempted from ad valorem taxation by K.S.A. 79-201n, and amendments thereto; (8) property exempted from ad valorem taxation by K.S.A. 79-201a *Seventeenth* and amendments thereto, including all property previously acquired by the secretary of transportation or a predecessor in interest, which is used in the administration, construction, maintenance or operation of the state system of highways. The secretary of transportation shall at the time of acquisition of property notify the county appraiser in the county in which the property is located that the acquisition occurred and provide a legal description of the property acquired; (9) property exempted from ad valorem taxation by K.S.A. 79-201a *Ninth*, and amendments thereto, including all property previously acquired by the Kansas turnpike authority which is used in the administration, construction, maintenance or operation of the Kansas turnpike. The Kansas turnpike authority shall at the time of acquisition of property notify the county appraiser in the county in which the property is located that the acquisition occurred and provide a legal description of the property acquired; (10) aquaculture machinery and equipment exempted from ad valorem taxation by K.S.A. 79-201j, and amendments thereto. As used in this section, "aquaculture" has the same meaning ascribed thereto by K.S.A. 47-1901, and amendments thereto; (11) Christmas tree machinery and equipment exempted from ad valorem taxation by K.S.A. 79-201j, and amendments thereto; (12) property used exclusively by the state or any municipality or political subdivision of the state for right-of-way purposes. The state agency or the governing body of the municipality or political subdivision shall at the time of acquisition of property for right-of-way purposes notify the county appraiser in the county in which the property is located that the acquisition occurred and provide a legal description of the property acquired; (13) machinery, equipment, materials and supplies exempted from ad valorem taxation by K.S.A. 79-201w, and amendments thereto; (14) vehicles owned by the state or by any political or taxing subdivision thereof and used exclusively for governmental purposes; (15) property used for residential purposes which is exempted pursuant to K.S.A. 79-201x from the property tax levied pursuant to K.S.A. 72-6431, and amendments thereto; (16) from and after July 1, 1998, vehicles which are owned by an organization having as one of its purposes the assistance by the provision of transit services to the elderly and to disabled persons and which are exempted pursuant to K.S.A. 79-201 *Ninth*; and (17) from and after July 1, 1998, motor vehicles exempted from taxation by subsection (e) of K.S.A. 79-5107, and amendments thereto.

(m) The provisions of this section shall apply to property exempt pursuant to the provisions of section 13 of article 11 of the Kansas constitution.

(n) The provisions of subsection ~~(j)~~ and (k) as amended by this act shall be applicable to all ~~taxable years commencing~~ **exemption applications filed in accordance with subsection (a)** after December 31, ~~1995~~ **2002**.

Sec. 4. K.S.A. 79-201q, K.S.A. 79-201s and K.S.A. 2002 Supp. 79-213 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute books.