

CHAPTER 154

SENATE Substitute for HOUSE BILL No. 2031

(Amends Chapter 73)

(Amended by Chapter 195)

AN ACT concerning income taxation; relating to withholding; publicly held partnerships; treatment of social security benefits for income tax purposes; earned income credit; amending K.S.A. 2006 Supp. 79-3299, 79-32,100e, 79-32,117, as amended by section 8 of 2007 House Bill No. 2419, and 79-32,205 and repealing the existing sections.

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

Section 1. K.S.A. 2006 Supp. 79-3299 is hereby amended to read as follows: 79-3299. (a) Every employer, payer, person or organization deducting and withholding tax, on or before January 31 of each year, shall 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. *Except as otherwise provided*, if the employer, payer, person or organization files statements which report such withholding information for 51 or more employees or payees, the statements shall be filed by electronic means. *If filing such statements by electronic means would be a hardship for any such employer, payer, person or organization, the secretary may permit such statements to be filed other than by electronic means.* 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 intentionally fails to furnish a statement to an employee or payee as required under the provisions of subsections (a) and (b) shall be guilty of a nonperson 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, and amendments thereto.

Sec. 2. K.S.A. 2006 Supp. 79-32,100e is hereby amended to read as follows: 79-32,100e. (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 subsection (a) of K.S.A. 79-32,110 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 ~~withhold~~ *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 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 the nonresident shareholder's 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 subsection (a) of K.S.A.

79-32,110 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. *The provisions of this subsection shall not apply to any publicly traded partnership, as defined under section 7704 of the federal internal revenue code.*

(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 the nonresident shareholder's 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 subsection (a) of K.S.A. 79-32,110 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 the nonresident member's 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 federal 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 member's name, federal identification number, internal revenue code section exemption number, and a copy of the internal revenue service exemption letter.

(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 a nonresident shareholder, partner or member files an affidavit with the department in a form acceptable to the department by which such nonresident shareholder, partner or member agrees to be subject to the personal jurisdiction of the department in 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 share-

holder, 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 such nonresident shareholder's, partner's or member's 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.

(k) The provisions of this section shall be part of and supplemental to the Kansas withholding and declaration of estimated tax act.

(l) The provisions of this section shall be effective on and after July 1, 2003.

Sec. 3. K.S.A. 2006 Supp. 79-32,117, as amended by section 8 of 2007 House Bill No. 2419, is hereby amended to read as follows: 79-32,117. (a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income less any related expenses directly incurred in the purchase of state or political subdivision obligations, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof issued prior to January 1, 1988, is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income. Interest income on obligations of this state or a political subdivision thereof issued after December 31, 1987, shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax. This paragraph shall not apply to taxes imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amendments thereto, for privilege tax year 1995, and all such years thereafter.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during a prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by K.S.A. 79-32,177, and amendments thereto.

(vi) Any amount of designated employee contributions picked up by an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965, and amendments to such sections.

(vii) The amount of any charitable contribution made to the extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 79-32,196, and amendments thereto.

(viii) The amount of any costs incurred for improvements to a swine facility, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2006 Supp. 79-32,204 and amendments thereto.

(ix) The amount of any ad valorem taxes and assessments paid and the amount of any costs incurred for habitat management or construction and maintenance of improvements on real property, claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203 and amendments thereto.

(x) Amounts received as nonqualified withdrawals, as defined by K.S.A. 2006 Supp. 75-643, and amendments thereto, if, at the time of contribution to a family postsecondary education savings account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, or if such amounts are not already included in the federal adjusted gross income.

(xi) The amount of any contribution made to the same extent the same is claimed as the basis for the credit allowed pursuant to K.S.A. 2006 Supp. 74-50,154, and amendments thereto.

(xii) For taxable years commencing after December 31, 2004, amounts received as withdrawals not in accordance with the provisions of K.S.A. 2006 Supp. 74-50,204, and amendments thereto, if, at the time of contribution to an individual development account, such amounts were subtracted from the federal adjusted gross income pursuant to paragraph (xiii) of subsection (c), or if such amounts are not already included in the federal adjusted gross income.

(xiii) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2006 Supp. 79-32,217 through 79-32,220 or 79-32,222, and amendments thereto.

(xiv) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2006 Supp. 79-32,221, and amendments thereto.

(xv) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2006 Supp. 79-32,223 through 79-32,226, and amendments thereto.

(xvi) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2006 Supp. 79-32,227, and amendments thereto.

(xvii) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2006 Supp. 79-32,228 through 79-32,231, and amendments thereto.

(xviii) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2006 Supp. 79-32,232, and amendments thereto.

(xix) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2006 Supp. 79-32,233 through 79-32,236, and amendments thereto.

(xx) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to K.S.A. 2006 Supp. 79-32,237, and amendments thereto.

(xxi) The amount of any expenditures claimed for deduction in determining federal adjusted gross income, to the extent the same is claimed as the basis for any credit allowed pursuant to K.S.A. 2006 Supp. 79-32,238 through 79-32,241, and amendments thereto.

(xxii) The amount of any amortization deduction claimed in determining federal adjusted gross income to the extent the same is claimed for deduction pursuant to section 7 of 2007 House Bill No. 2419, and amendments thereto.

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions less any related expenses directly incurred in the purchase of such obligations or securities, to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the

United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of taxes on or measured by income or fees or payments in lieu of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system from the civil service retirement and disability fund and other amounts received as retirement benefits in whatever form which were earned for being employed by the federal government or for service in the armed forces of the United States.

(viii) Amounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U.S.C. 228b (a) and 228c (a)(1) et seq.

(ix) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106, and amendments thereto.

(x) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. 280 C. For taxable years ending after December 31, 1978, the amount of the targeted jobs tax credit and work incentive credit disallowances under 26 U.S.C. 280 C.

(xi) For taxable years beginning after December 31, 1986, dividend income on stock issued by Kansas Venture Capital, Inc.

(xii) For taxable years beginning after December 31, 1989, amounts received by retired employees of a board of public utilities as pension and retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249 and amendments thereto.

(xiii) For taxable years beginning after December 31, 2004, amounts contributed to and the amount of income earned on contributions deposited to an individual development account under K.S.A. 2006 Supp. 74-50,201, et seq., and amendments thereto.

(xiv) For all taxable years commencing after December 31, 1996, that portion of any income of a bank organized under the laws of this state or any other state, a national banking association organized under the laws of the United States, an association organized under the savings and loan code of this state or any other state, or a federal savings association organized under the laws of the United States, for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, which accrues to the taxpayer who is a stockholder of such corporation and which is not distributed to the stockholders as dividends of the corporation.

~~(xv) For all taxable years beginning after December 31, 1999, amounts not exceeding \$3,000 or \$6,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a family postsecondary education savings account established under the Kansas postsecondary education savings program for the purpose of paying the~~

qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. For all taxable years beginning after December 31, 2006, amounts not exceeding \$3,000, or \$6,000 for a married couple filing a joint return, for each designated beneficiary which are contributed to a *family postsecondary education savings account established under the Kansas postsecondary education savings program* or a qualified tuition program established and maintained by another state or agency or instrumentality thereof pursuant to section 529 of the internal revenue code of 1986, as amended, for the purpose of paying the qualified higher education expenses of a designated beneficiary at an institution of postsecondary education. The terms and phrases used in this paragraph shall have the meaning respectively ascribed thereto by the provisions of K.S.A. 2006 Supp. 75-643, and amendments thereto, and the provisions of such section are hereby incorporated by reference for all purposes thereof.

(xvi) For the tax year beginning after December 31, 2004, an amount not exceeding \$500; for the tax year beginning after December 31, 2005, an amount not exceeding \$600; for the tax year beginning after December 31, 2006, an amount not exceeding \$700; for the tax year beginning after December 31, 2007, an amount not exceeding \$800; for the tax year beginning December 31, 2008, an amount not exceeding \$900; and for all taxable years commencing after December 31, 2009, an amount not exceeding \$1,000 of the premium costs for qualified long-term care insurance contracts, as defined by subsection (b) of section 7702B of public law 104-191.

(xvii) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are or were members of the armed forces of the United States, including service in the Kansas army and air national guard, as a recruitment, sign up or retention bonus received by such taxpayer as an incentive to join, enlist or remain in the armed services of the United States, including service in the Kansas army and air national guard, and amounts received for repayment of educational or student loans incurred by or obligated to such taxpayer and received by such taxpayer as a result of such taxpayer's service in the armed forces of the United States, including service in the Kansas army and air national guard.

(xviii) For all taxable years beginning after December 31, 2004, amounts received by taxpayers who are eligible members of the Kansas army and air national guard as a reimbursement pursuant to K.S.A. 48-281, and amendments thereto, and amounts received for death benefits pursuant to K.S.A. 48-282, and amendments thereto, or pursuant to section 1 or section 2 of chapter 207 of the 2005 session laws of Kansas, and amendments thereto, to the extent that such death benefits are included in federal adjusted gross income of the taxpayer.

(xix) *For the taxable year beginning after December 31, 2006, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$50,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly; and for all taxable years beginning after December 31, 2007, amounts received as benefits under the federal social security act which are included in federal adjusted gross income of a taxpayer with federal adjusted gross income of \$75,000 or less, whether such taxpayer's filing status is single, head of household, married filing separate or married filing jointly.*

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and amendments thereto.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131, and amendments thereto, to the extent that such items affect federal adjusted gross income of the partner.

Sec. 4. K.S.A. 2006 Supp. 79-32,205 is hereby amended to read as follows: 79-32,205. (a) There shall be allowed as a credit against the tax liability of a resident individual imposed under the Kansas income tax act an amount equal to ~~15%~~ 17% for tax year ~~2002~~ 2007, and all tax years thereafter, of the amount of the earned income credit allowed against such taxpayer's federal income tax liability pursuant to section 32 of the

federal internal revenue code for the taxable year in which such credit was claimed against the taxpayer's federal income tax liability.

(b) If the amount of the credit allowed by subsection (a) exceeds the taxpayer's income tax liability imposed under the Kansas income tax act, such excess amount shall be refunded to the taxpayer.

Sec. 5. K.S.A. 2006 Supp. 79-3299, 79-32,100e, 79-32,117, as amended by section 8 of 2007 House Bill No. 2419, and 79-32,205 are hereby repealed.

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

Approved April 19, 2007.
