

{As Amended by House Committee of the Whole}

Session of 2014

HOUSE BILL No. 2557

By Committee on Taxation

1-31

1 AN ACT concerning ~~income~~ taxation; relating to **{income tax,}** penalties
2 for certain taxpayers who file incorrect returns; **{sales tax, refunds for**
3 **taxes paid on textbooks;}** amending K.S.A. 2013 Supp. 79-3228 and
4 repealing the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2013 Supp. 79-3228 is hereby amended to read as
8 follows: 79-3228. (a) For all taxable years ending prior to January 1, 2002,
9 if any taxpayer, without intent to evade the tax imposed by this act, shall
10 fail to file a return or pay the tax, if one is due, at the time required by or
11 under the provisions of this act, but shall voluntarily file a correct return of
12 income or pay the tax due within six months thereafter, there shall be
13 added to the tax an additional amount equal to 10% of the unpaid balance
14 of tax due plus interest at the rate prescribed by subsection (a) of K.S.A.
15 79-2968, and amendments thereto, from the date the tax was due until
16 paid.

17 (b) For all taxable years ending prior to January 1, 2002, if any
18 taxpayer fails voluntarily to file a return or pay the tax, if one is due,
19 within six months after the time required by or under the provisions of this
20 act, there shall be added to the tax an additional amount equal to 25% of
21 the unpaid balance of tax due plus interest at the rate prescribed by
22 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
23 the tax was due until paid. Notwithstanding the foregoing, in the event an
24 assessment is issued following a field audit for any period for which a
25 return was filed by the taxpayer and all of the tax was paid pursuant to
26 such return, a penalty shall be imposed for the period included in the
27 assessment in the amount of 10% of the unpaid balance of tax due shown
28 in the notice of assessment. If after review of a return for any period
29 included in the assessment, the secretary or secretary's designee
30 determines that the underpayment of tax was due to the failure of the
31 taxpayer to make a reasonable attempt to comply with the provisions of
32 this act, such penalty shall be imposed for the period included in the
33 assessment in the amount of 25% of the unpaid balance of tax due.

34 (c) For all taxable years ending after December 31, 2001, if any
35 taxpayer fails to file a return or pay the tax if one is due, at the time
36 required by or under the provisions of this act, there shall be added to the

1 tax an additional amount equal to 1% of the unpaid balance of the tax due
2 for each month or fraction thereof during which such failure continues, not
3 exceeding 24% in the aggregate, plus interest at the rate prescribed by
4 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
5 the tax was due until paid. Notwithstanding the foregoing, in the event an
6 assessment is issued following a field audit for any period for which a
7 return was filed by the taxpayer and all of the tax was paid pursuant to
8 such return, a penalty shall be imposed for the period included in the
9 assessment in an amount of 1% per month not exceeding 10% of the
10 unpaid balance of tax due shown in the notice of assessment. If after
11 review of a return for any period included in the assessment, the secretary
12 or secretary's designee determines that the underpayment of tax was due to
13 the failure of the taxpayer to make a reasonable attempt to comply with the
14 provisions of this act, such penalty shall be imposed for the period
15 included in the assessment in the amount of 25% of the unpaid balance of
16 tax due.

17 (d) *For all taxable years ending after December 31, 2013, if any*
18 *taxpayer who has failed to file a return—~~or has filed an incorrect or~~*
19 *~~insufficient return,~~ and after notice from the director refuses or neglects*
20 *within 20 days to file a proper return, the director shall determine the*
21 *income of such taxpayer according to the best available information and*
22 *assess the tax together with a penalty of 50% of the unpaid balance of tax*
23 *due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-*
24 *2968, and amendments thereto, from the date the tax was originally due to*
25 *the date of payment. If, at any time, a taxpayer filed a return and paid in*
26 *full the tax due as stated on the return, at the time required by or under the*
27 *provisions of this act and subsequently is adjusted by the director, and a*
28 *notice of liability is sent to the taxpayer, no penalty shall be assessed*
29 *under the provisions of this subsection with respect to any underpayment*
30 *of income tax liability due to the adjustment if any such tax is paid within*
31 *30 days of such notice of liability. If any such tax is not paid within 30*
32 *days of original notice, the penalty provided under the provisions of this*
33 *subsection shall apply.*

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

1 (f) Any person who willfully signs a fraudulent return shall be guilty
2 of a felony, and upon conviction thereof shall be punished by
3 imprisonment for a term not exceeding five years. The term "person" as
4 used in this section includes any agent of the taxpayer, and officer or
5 employee of a corporation or a member or employee of a partnership, who
6 as such officer, employee or member is under a duty to perform the act in
7 respect of which the violation occurs.

8 (g) (1) Whenever the secretary or the secretary's designee determines
9 that the failure of the taxpayer to comply with the provisions of
10 subsections (a), (b), (c) and (d) of this section was due to reasonable
11 causes, the secretary or the secretary's designee may waive or reduce any
12 of the penalties and may reduce the interest rate to the underpayment rate
13 prescribed and determined for the applicable period under section 6621 of
14 the federal internal revenue code as in effect on January 1, 1994, upon
15 making a record of the reasons therefor.

16 (2) No penalty shall be assessed hereunder with respect to any
17 underpayment of income tax liability reported on any amended return filed
18 by any taxpayer who at the time of filing pays such underpayment and
19 whose return is not being examined at the time of filing.

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

23 (h) In case of a nonresident or any officer or employee of a
24 corporation, the failure to do any act required by or under the provisions of
25 this act shall be deemed an act committed in part at the office of the
26 director.

27 (i) In the case of a nonresident individual, partnership or corporation,
28 the failure to do any act required by or under the provision of this act shall
29 prohibit such nonresident from being awarded any contract for
30 construction, reconstruction or maintenance or for the sale of materials and
31 supplies to the state of Kansas or any political subdivision thereof until
32 such time as such nonresident has fully complied with this act.

33 **{New Sec. 2. Sales tax paid on and after July 1, 2014, on the gross**
34 **receipts received from the sale of required textbooks purchased in**
35 **Kansas by a student enrolled in a postsecondary educational**
36 **institution in this state shall be refunded. Each claim for a sales tax**
37 **refund shall be verified and submitted to the director of taxation upon**
38 **forms furnished by the director and shall be accompanied by any**
39 **additional documentation required by the director. The director shall**
40 **review each claim and shall refund that amount of sales tax paid as**
41 **determined under the provisions of this section. All refunds shall be**
42 **paid from the sales tax refund fund upon warrants of the director of**
43 **accounts and reports pursuant to vouchers approved by the director**

1 or the director's designee. For the purposes of this section,
2 {"postsecondary educational institution" means any university,
3 municipal university, community college and technical college,
4 whether public or private}.

5 Sec. ~~2~~ {3.} K.S.A. 2013 Supp. 79-3228 is hereby repealed.

6 Sec. ~~3~~ {4.} This act shall take effect and be in force from and after its
7 publication in the statute book.