

HOUSE BILL No. 2411

By Committee on Taxation

2-13

1 AN ACT concerning income taxation; relating to withholding and
2 remittance of employee income taxes by employers; decreasing the
3 penalties for failing to timely remit; amending K.S.A. 79-32,107 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. 79-32,107 is hereby amended to read as follows:
8 79-32,107. (a) All penalties and interest prescribed by K.S.A. 79-3228, and
9 amendments thereto, for noncompliance with the income tax laws of
10 Kansas shall be applicable for noncompliance with the provisions of the
11 Kansas withholding and declaration of estimated tax act relating to
12 withholding tax which shall be enforced in the same manner as the Kansas
13 income tax act. A penalty at the same rate per annum prescribed by
14 subsection (b) of K.S.A. 79-2968(b), and amendments thereto, for interest
15 upon delinquent or unpaid taxes shall be applied and added to a taxpayer's
16 amount of underpayment of estimated tax due from the date the estimated
17 tax payment was due until the same is paid or until the 15th day of the
18 fourth month following the close of the taxable year for which such
19 estimated tax is a credit, whichever date is earlier, but such penalty shall
20 not be added if the total amount thereof does not exceed \$1. For purposes
21 of this subsection, the amount of underpayment of estimated tax shall be
22 the excess of the amount of the installment which would be required to be
23 paid if the estimated tax were equal to 90% of the tax shown on the return
24 for the taxable year or, if no return was filed, 90% of the tax for such year,
25 over the amount, if any, of the installment paid on or before the last date
26 prescribed for payment. Amounts due from any employer on account of
27 withholding or from any taxpayer for estimated tax may be collected by
28 the director in the manner provided for the collection of state income tax in
29 K.S.A. 79-3235, and amendments thereto. For purposes of this subsection,
30 "underpayment of tax" means the difference between the amount of tax
31 actually paid and the amount of tax which would have been required to be
32 paid to avoid penalty pursuant to subsection (b) or (c).

33 (b) No penalty or interest shall be imposed upon any individual with
34 respect to any underpayment of any installment if the total amount of all
35 payments of estimated tax made on or before the last date prescribed for
36 the payment of such installment equals or exceeds the amount which

1 would have been required to be paid on or before such date if the
 2 estimated tax were whichever of the following is the least:

3 (1) The tax shown on the return of the individual for the preceding
 4 taxable year, if a return showing a liability for tax was filed by the
 5 individual for the preceding taxable year;

6 (2) zero if no return was required to be filed or if the tax liability on
 7 the individual's return was less than \$200 for the preceding taxable year;

8 (3) an amount equal to $66\frac{2}{3}\%$, in the case of individuals referred to
 9 ~~in subsection (b) of K.S.A. 79-32,102(b)~~, and amendments thereto, and
 10 90%, in the case of all other individuals, of the tax for the taxable year
 11 computed by placing on an annualized basis, pursuant to rules and
 12 regulations adopted by the secretary of revenue, the taxable income for the
 13 months in the taxable year ending before the month in which the
 14 installment is required to be made.

15 (c) No penalty or interest shall be imposed upon any corporation with
 16 respect to any underpayment of any installment of estimated tax if the total
 17 amount of all payments of estimated tax made on or before the last date
 18 prescribed for the payment of such installment equals or exceeds the
 19 amount which would have been required to be paid on or before such date
 20 if the estimated tax were whichever of the following is the least:

21 (1) The tax shown on the return of the corporation for the preceding
 22 taxable year, if a return showing a liability for tax was filed by the
 23 corporation for the preceding taxable year, or zero if no return was
 24 required to be filed, or if the tax liability on the corporation's return was
 25 less than \$500 for the preceding taxable year; or

26 (2) (A) an amount equal to 90% of the tax for the taxable year
 27 computed by placing on an annualized basis the taxable income:

28 (i) For the first three months of the taxable year, in the case of the
 29 installment required to be paid in the fourth month;

30 (ii) for the first three months or for the first five months of the taxable
 31 year, in the case of the installment required to be paid in the sixth month;

32 (iii) for the first six months or for the first eight months of the taxable
 33 year in the case of the installment required to be paid in the ninth month;
 34 and

35 (iv) for the first nine months or for the first 11 months of the taxable
 36 year, in the case of the installment required to be paid in the 12th month of
 37 the taxable year.

38 (B) For purposes of this ~~subsection~~ *paragraph* (2), the taxable income
 39 shall be placed on an annualized basis by:

40 (i) Multiplying by 12 the taxable income referred to in ~~subsection (2)~~
 41 ~~(A)~~, *subparagraph (A)*; and

42 (ii) dividing the resulting amount by the number of months in the
 43 taxable year (three, five, six, eight, nine, or 11, as the case may be)

1 referred to in ~~subsection (2)(A)~~ *subparagraph (A)*.

2 (d) If the employer, in violation of the provisions of this act, fails to
3 deduct and withhold under this chapter, and thereafter the tax against
4 which such withholding may be credited is paid, the amount otherwise
5 required to be deducted and withheld shall not be collected from the
6 employer. This subsection shall in no case relieve the employer from
7 liability for any penalties or additions to the tax otherwise applicable in
8 respect of such failure to deduct and withhold.

9 (e) Any person required to collect, truthfully account for, and pay
10 over any tax imposed by this act, who willfully fails to collect such tax, or
11 truthfully account for and pay over such tax, or willfully attempts in any
12 manner to evade or defeat any such tax or the payment thereof, shall in
13 addition to the other penalties of this section be liable to a penalty equal to
14 the total amount of the tax evaded, or not collected, or not accounted for
15 and paid over. As used in this section, "willfully" has the same meaning as
16 such term has for federal tax purposes in 26 U.S.C. § 6672.

17 (f) *(1)* In case of failure by any employer required by ~~subsection (b)~~
18 ~~of K.S.A. 79-3298(b)~~, and amendments thereto, to remit any amount of
19 withheld taxes by the date prescribed therefor, unless it is shown that such
20 failure is due to reasonable cause and not due to willful neglect, there shall
21 be imposed upon such person a penalty of ~~15% of the amount of the~~
22 ~~underpayment:~~

23 (A) *2% of the amount of the underpayment if remitted within one to*
24 *five days;*

25 (B) *5% of the amount of the underpayment if remitted within six to 15*
26 *days;*

27 (C) *10% of the amount of the underpayment if remitted after 15 days;*
28 *and*

29 (D) *15% of the amount of the underpayment if remitted after 15 days*
30 *and the department has issued a notice to the person regarding the*
31 *underpayment but the amount of the underpayment was not remitted*
32 *within 10 days of issuance of the notice.*

33 (2) For purposes of this subsection, the term "underpayment" means
34 the excess of the amount of the tax required to be withheld and remitted
35 over the amount, if any, remitted on or before the date prescribed therefor.
36 The failure to remit for any withholding period shall be deemed not to
37 continue beyond the last date prescribed for filing the annual return as
38 required by ~~subsection (d)~~ of K.S.A. 79-3298(d), and amendments thereto.
39 Penalty and interest as prescribed by K.S.A. 79-3228, and amendments
40 thereto, shall not begin to accrue under subsection (a) ~~of this section~~ on the
41 amount of any such underpayment until the due date of the annual return
42 for the calendar year in which such failure to remit occurs.

43 (g) Whenever the secretary or the secretary's designee determines that

1 the failure of the taxpayer to comply with the provisions of subsections (a),
2 (e); or (f) ~~of this section~~ was due to reasonable causes, the secretary or the
3 secretary's designee may waive or reduce any of ~~said~~ *such* penalties and
4 may reduce the interest rate to the underpayment rate prescribed and
5 determined for the applicable period under section 6621 of the federal
6 internal revenue code as in effect on January 1, 1994, upon making a
7 record of the reasons therefor.

8 Sec. 2. K.S.A. 79-32,107 is hereby repealed.

9 Sec. 3. This act shall take effect and be in force from and after its
10 publication in the statute book.