

SENATE BILL No. 170

By Committee on Ways and Means

2-7

AN ACT concerning taxation; relating to withholding tax; withholding on payments of management or consulting fees to nonresidents; amending K.S.A. 2002 Supp. 79-3295 and 79-32,100a and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 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 company, 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 “distributee” means any person or organization who receives a distribution which is subject to withholding of income tax pursuant to this act.

(d) The term “distribution” means a distribution from a corporation for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, from a limited liability company formed under the laws of the state of Kansas, or from a partnership.

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

1 (f) The term “payment other than wages” means a payment that is
2 ~~subject to federal income tax withholding and~~ taxable under the Kansas
3 income tax act, and that is a payment:

4 (1) For any supplemental unemployment compensation, annuity, or
5 sick pay;

6 (2) pursuant to a voluntary withholding agreement;

7 (3) of gambling winnings;

8 (4) of taxable payments of Indian casino profits;

9 (5) for any vehicle fringe benefit;

10 (6) of periodic payments of pensions, annuities, and other deferred
11 income;

12 (7) of nonperiodic distributions of pensions, annuities, and other de-
13 ferred income; ~~or~~

14 (8) of eligible rollover distributions of pensions, annuities, and other
15 deferred income;;

16 (9) *of a management fee paid in the ordinary course of a trade, busi-*
17 *ness or other for profit venture; or*

18 (10) *of a consulting fee paid in the ordinary course of a trade, business*
19 *or other for profit venture.*

20 (g) The term ~~“payer”~~ “payer” means any person or organization,
21 other than an employer, who makes payments, other than wages or dis-
22 tributions, which are subject to withholding of income tax pursuant to
23 this act.

24 (h) The term “wages” means wages as defined by section 3401(a) of
25 the federal internal revenue code which are taxable under the Kansas
26 income tax act, and shall include any prize or award paid to a professional
27 athlete at a sporting event held in this state.

28 Sec. 2. K.S.A. 2002 Supp. 79-32,100a is hereby amended to read as
29 follows: 79-32,100a. (a) Every ~~payer~~ *payer* who is required under federal
30 law to withhold upon payments other than wages pursuant to the federal
31 internal revenue code shall ~~withhold and~~ deduct *and withhold* an amount
32 to be determined in accordance with K.S.A. 2002 Supp. 79-32,100d, and
33 amendments thereto, whenever the payee is a person whose primary res-
34 idence is in Kansas.

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

41 (c) Every ~~payer~~ *payer* who makes a distribution as defined by sub-
42 section (d) of K.S.A. 79-3295, and amendments thereto, shall ~~withhold~~
43 ~~and~~ deduct *and withhold* an amount to be determined in accordance with

1 K.S.A. 2002 Supp. 79-32,100d, and amendments thereto, from amounts
2 distributed or distributable to each nonresident shareholder or partner.

3 *(d) Every payer who makes a payment of a management fee or a*
4 *consulting fee to a nonresident shall deduct and withhold an amount to*
5 *be determined in accordance with K.S.A. 2002 Supp. 79-32,100d, and*
6 *amendments thereto.*

7 Sec. 3. K.S.A. 2002 Supp. 79-3295 and 79-32,100a are hereby
8 repealed.

9 Sec. 4. This act shall take effect and be in force from and after its
10 publication in the statute book.

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