

As Amended by House Committee

Session of 2004

HOUSE BILL No. 2883

By Committee on Taxation

2-16

10 AN ACT concerning income taxation; relating to estimated tax of indi-
11 viduals; **credits, commercial and industrial machinery and equip-**
12 **ment;** amending **K.S.A. 79-32,107** and K.S.A. 2003 Supp. 79-32,101
13 **and 79-32,206** and repealing the existing ~~section sections~~.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 2003 Supp. 79-32,101 is hereby amended to read
17 as follows: 79-32,101. (a) At the time prescribed in this section: (1) Every
18 individual shall pay estimated tax who can reasonably expect to owe, after
19 withholding and credits, tax of at least ~~\$200~~ \$500 and who expects their
20 withholding and credits to be less than (A) 90% of the tax shown on the
21 return for the current year or (B) 100% of the tax shown for the preceding
22 tax year; and

23 (2) every corporation shall pay estimated tax if its Kansas income tax
24 liability can reasonably be expected to exceed \$500.

25 (b) In the case of a husband and wife, single payments under this
26 section may be made by them jointly. If a joint payment is made, but a
27 joint return is not made for the taxable year, the estimated tax for such
28 year may be divided between them. Notification of the division of such
29 payments shall be made at such time and in such manner as the director
30 of taxation may provide, on forms issued by the director of taxation.

31 (c) If on or before January 31, or March 1, in the case of an individual
32 referred to in subsection (b) of K.S.A. 79-32,102, *and amendments thereto*
33 relating to income from farming or fishing, of the succeeding year, the
34 taxpayer files a return for the taxable year, and pays in full the amount of
35 tax computed on the return, then, under rules and regulations of the
36 secretary of revenue no payment otherwise required to be made under
37 this section on January 15, or at any time during the preceding year, in
38 the case of an individual referred to in subsection (b) of K.S.A. 79-32,102,
39 *and amendments thereto* relating to income from farming or fishing, is
40 required to be made.

41 (d) An individual or corporation with a taxable year of less than 12
42 months shall make a declaration for less than 12 months as prescribed by
43 rules and regulations of the secretary of revenue.

- 1 (e) The provisions of this section shall not apply to an estate or trust.
- 2 **Sec. 2. K.S.A. 79-32,107 is hereby amended to read as follows:**
- 3 **79-32,107. (a) All penalties and interest prescribed by K.S.A. 79-**
- 4 **3228, and amendments thereto, for noncompliance with the in-**
- 5 **come tax laws of Kansas shall be applicable for noncompliance with**
- 6 **the provisions of the Kansas withholding and declaration of esti-**
- 7 **imated tax act relating to withholding tax which shall be enforced**
- 8 **in the same manner as the Kansas income tax act. A penalty at the**
- 9 **same rate per annum prescribed by subsection (b) of K.S.A. 79-**
- 10 **2968, and amendments thereto, for interest upon delinquent or**
- 11 **unpaid taxes shall be applied and added to a taxpayer's amount of**
- 12 **underpayment of estimated tax due from the date the estimated**
- 13 **tax payment was due until the same is paid or until the 15th day**
- 14 **of the fourth month following the close of the taxable year for**
- 15 **which such estimated tax is a credit, whichever date is earlier, but**
- 16 **such penalty shall not be added if the total amount thereof does**
- 17 **not exceed \$1. For purposes of this subsection, the amount of un-**
- 18 **derpayment of estimated tax shall be the excess of the amount of**
- 19 **the installment which would be required to be paid if the estimated**
- 20 **tax were equal to 90% of the tax shown on the return for the tax-**
- 21 **able year or, if no return was filed, 90% of the tax for such year,**
- 22 **over the amount, if any, of the installment paid on or before the**
- 23 **last date prescribed for payment. Amounts due from any employer**
- 24 **on account of withholding or from any taxpayer for estimated tax**
- 25 **may be collected by the director in the manner provided for the**
- 26 **collection of state income tax in K.S.A. 79-3235, and amendments**
- 27 **thereto. For purposes of this subsection, "underpayment of tax"**
- 28 **means the difference between the amount of tax actually paid and**
- 29 **the amount of tax which would have been required to be paid to**
- 30 **avoid penalty pursuant to subsection (b) or (c).**
- 31 (b) No penalty or interest shall be imposed upon any individual
- 32 with respect to any underpayment of any installment if the total
- 33 amount of all payments of estimated tax made on or before the
- 34 last date prescribed for the payment of such installment equals or
- 35 exceeds the amount which would have been required to be paid
- 36 on or before such date if the estimated tax were whichever of the
- 37 following is the least:
- 38 (1) The tax shown on the return of the individual for the pre-
- 39 ceding taxable year, if a return showing a liability for tax was filed
- 40 by the individual for the preceding taxable year;
- 41 (2) zero if no return was required to be filed or if the tax lia-
- 42 bility on the individual's return was less than \$200 for the preced-
- 43 ing taxable year;

1 (3) an amount equal to 66 $\frac{2}{3}$ %, in the case of individuals re-
2 ferred to in subsection (b) of K.S.A. 79-32,102, and amendments
3 thereto, and 90%, in the case of all other individuals, of the tax for
4 the taxable year computed by placing on an annualized basis, pur-
5 suant to rules and regulations adopted by the secretary of revenue,
6 the taxable income for the months in the taxable year ending be-
7 fore the month in which the installment is required to be made.

8 (c) No penalty or interest shall be imposed upon any corpora-
9 tion with respect to any underpayment of any installment of esti-
10 mated tax if the total amount of all payments of estimated tax made
11 on or before the last date prescribed for the payment of such in-
12 stallment equals or exceeds the amount which would have been
13 required to be paid on or before such date if the estimated tax
14 were whichever of the following is the least:

15 (1) The tax shown on the return of the corporation for the pre-
16 ceding taxable year, if a return showing a liability for tax was filed
17 by the corporation for the preceding taxable year, or zero if no
18 return was required to be filed, or if the tax liability on the cor-
19 poration's return was less than \$500 for the preceding taxable
20 year; or

21 (2) (A) an amount equal to 90% of the tax for the taxable year
22 computed by placing on an annualized basis the taxable income:
23 (i) For the first three months of the taxable year, in the case of the
24 installment required to be paid in the fourth month; (ii) for the
25 first three months or for the first five months of the taxable year,
26 in the case of the installment required to be paid in the sixth
27 month; (iii) for the first six months or for the first eight months of
28 the taxable year in the case of the installment required to be paid
29 in the ninth month; and (iv) for the first nine months or for the
30 first 11 months of the taxable year, in the case of the installment
31 required to be paid in the 12th month of the taxable year.

32 (B) For purposes of this subsection (2), the taxable income shall
33 be placed on an annualized basis by (i) multiplying by 12 the tax-
34 able income referred to in subsection (2)(A), and (ii) dividing the
35 resulting amount by the number of months in the taxable year
36 (three, five, six, eight, nine, or 11, as the case may be) referred to
37 in subsection (2)(A).

38 (d) If the employer, in violation of the provisions of this act,
39 fails to deduct and withhold under this chapter, and thereafter the
40 tax against which such withholding may be credited is paid, the
41 amount otherwise required to be deducted and withheld shall not
42 be collected from the employer; but this subsection shall in no case
43 relieve the employer from liability for any penalties or additions

1 to the tax otherwise applicable in respect of such failure to deduct
2 and withhold.

3 (e) Any person required to collect, truthfully account for, and
4 pay over any tax imposed by this act, who willfully fails to collect
5 such tax, or truthfully account for and pay over such tax, or willfully
6 attempts in any manner to evade or defeat any such tax or the
7 payment thereof, shall in addition to the other penalties of this
8 section be liable to a penalty equal to the total amount of the tax
9 evaded, or not collected, or not accounted for and paid over.

10 (f) In case of failure by any employer required by subsection
11 (b) of K.S.A. 79-3298, and amendments thereto, to remit any
12 amount of withheld taxes by the date prescribed therefor, unless
13 it is shown that such failure is due to reasonable cause and not due
14 to willful neglect, there shall be imposed upon such person a pen-
15 alty of 15% of the amount of the underpayment. For purposes of
16 this subsection, the term “underpayment” means the excess of the
17 amount of the tax required to be withheld and remitted over the
18 amount, if any, remitted on or before the date prescribed therefor.
19 The failure to remit for any withholding period shall be deemed
20 not to continue beyond the last date prescribed for filing the an-
21 nual return as required by subsection (d) of K.S.A. 79-3298, and
22 amendments thereto. Penalty and interest as prescribed by K.S.A.
23 79-3228, and amendments thereto, shall not begin to accrue under
24 subsection (a) of this section on the amount of any such underpay-
25 ment until the due date of the annual return for the calendar year
26 in which such failure to remit occurs.

27 (g) Whenever the secretary or the secretary’s designee deter-
28 mines that the failure of the taxpayer to comply with the provisions
29 of subsections (a), (e), or (f) of this section was due to reasonable
30 causes, the secretary or the secretary’s designee may waive or re-
31 duce any of ~~said~~ such penalties and may reduce the interest rate to
32 the underpayment rate prescribed and determined for the appli-
33 cable period under section 6621 of the federal internal revenue
34 code as in effect on January 1, 1994, upon making a record of the
35 reasons therefor.

36 (h) *For tax year 2004 and tax years thereafter, no penalty for a tax*
37 *year shall be imposed upon any individual with respect to any underpay-*
38 *ment of estimated tax, if such individual has a federal income tax liability,*
39 *net of federal withholding, estimated tax payments, credits and other pay-*
40 *ments, equal to or less than zero for that same tax year.*

41 **Sec. 3. K.S.A. 2003 Supp. 79-32,206 is hereby amended to**
42 **read as follows: 79-32,206. For all taxable years commencing after**
43 **December 31, 2001, there shall be allowed as a credit against the**

1 tax liability of a taxpayer imposed under the Kansas income tax act,
2 the premiums tax upon insurance companies imposed pursuant to
3 K.S.A. 40-252, and amendments thereto, and the privilege tax as
4 measured by net income of financial institutions imposed pursuant
5 to article 11 of chapter 79 of the Kansas Statutes Annotated, an
6 amount equal to 15% of the property tax levied for property tax
7 years 2002, 2003 and 2004, 20% of the property tax levied for
8 property tax years 2005 and 2006, and 25% of the property tax
9 levied for property tax year 2007, and all such years thereafter,
10 actually and timely paid during an income or privilege taxable year
11 upon commercial and industrial machinery and equipment clas-
12 sified for property taxation purposes pursuant to section 1 of ar-
13 ticle 11 of the Kansas constitution in subclass (5) or (6) of class 2,
14 machinery and equipment classified for such purposes in subclass
15 (2) of class 2. For all taxable years commencing after December
16 31, 2004, there shall be allowed as a credit against the tax liability
17 of a taxpayer imposed under the Kansas income tax act an amount
18 equal to 20% of the property tax levied for property tax years 2005
19 and 2006, and 25% of the property tax levied for property tax year
20 2007 and all such years thereafter, actually and timely paid during
21 an income taxable year upon railroad machinery and equipment
22 classified for property tax purposes pursuant to section 1 of article
23 11 of the Kansas constitution in subclass (3) of class 2. Prior to the
24 2004 legislative session, the joint committee on economic development
25 shall conduct a study of the economic impact of the foregoing provision.
26 **If the amount of such tax credit exceeds the taxpayer's income tax**
27 **liability for the taxable year, the amount thereof which exceeds**
28 **such tax liability shall be refunded to the taxpayer. If the taxpayer**
29 **is a corporation having an election in effect under subchapter S of**
30 **the federal internal revenue code, a partnership or a limited lia-**
31 **bility company, the credit provided by this section shall be claimed**
32 **by the shareholders of such corporation, the partners of such part-**
33 **nership or the members of such limited liability company in the**
34 **same manner as such shareholders, partners or members account**
35 **for their proportionate shares of the income or loss of the corpo-**
36 **ration, partnership or limited liability company. The secretary of**
37 **revenue shall adopt rules and regulations regarding the filing of docu-**
38 **ments that support the amount of credit claimed pursuant to this section.**
39 **Sec. ~~4~~. K.S.A. 79-32,107 and K.S.A. 2003 Supp. 79-32,101 ~~is~~ and**
40 **79-32,206 are hereby repealed.**
41 **Sec. ~~3~~ 5.** This act shall take effect and be in force from and after its
42 publication in the statute book.