

HOUSE BILL No. 2060

By Special Committee on Assessment and Taxation

1-14

9 AN ACT concerning franchise tax; relating to delinquencies; forfeiture
10 of articles of incorporation; disclosure of information on annual report
11 to secretary of revenue; amending K.S.A. 2004 Supp. 17-7511 and 79-
12 5401 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 2004 Supp. 17-7511 is hereby amended to read as
16 follows: 17-7511. Pursuant to the authority granted by subsection (c) of
17 K.S.A. 79-3234, the secretary of state, as a legal representative of the
18 state, may inspect the annual Kansas income tax return of any corporation
19 for the purpose of verifying any information contained in the annual re-
20 port filed by such corporation with the secretary of state pursuant to this
21 act. The secretary of state shall not disclose any information obtained from
22 any such return, except as may be necessary to commence an appropriate
23 administrative or judicial proceeding against the corporation filing the
24 same, and shall disclose to the secretary of revenue any information and
25 allow the secretary to inspect as necessary the annual report for purposes
26 of verifying any information contained on the franchise tax return *or de-*
27 *termining whether such corporation is required to file a franchise tax*
28 *return*, as provided in K.S.A. 2004 Supp. 79-5401, and amendments
29 thereto.

30 Sec. 2. K.S.A. 2004 Supp. 79-5401 is hereby amended to read as
31 follows: 79-5401. (a) (1) For any foreign or domestic for profit corpora-
32 tion, or professional corporation or association, duly registered and au-
33 thorized to do business in Kansas by the secretary of state and which has
34 taxable equity attributable to Kansas of \$100,000 or more, such entity
35 shall pay an annual franchise tax to the secretary of revenue at the rate
36 of .125% of such entity's taxable equity attributable to Kansas, except that
37 such annual franchise tax for any such entity shall not exceed \$20,000.

38 (2) For any foreign or domestic limited liability company, foreign or
39 domestic limited partnership or foreign or domestic limited liability part-
40 nership duly registered and authorized to do business in Kansas by the
41 secretary of state and which has net capital accounts located or used in
42 this state at the end of the preceding taxable year as required to be re-
43 ported on the federal partnership return of income of \$100,000 or more,

1 such entity shall pay an annual franchise tax to the secretary of revenue
2 at the rate of .125% of the net capital accounts located in or used in this
3 state at the end of the preceding taxable year as required to be reported
4 on the federal partnership return of income, or for a one-member LLC
5 taxed as a sole proprietorship which has net book value of the LLC as
6 calculated on an income tax basis located in or used in this state at the
7 end of the preceding taxable year of \$100,000 or more, .125% of net book
8 value of the LLC as calculated on an income tax basis located in or used
9 in this state at the end of the preceding taxable year, except that such
10 annual franchise tax for any such entity shall not exceed \$20,000.

11 (3) For any business trust duly registered and authorized to do busi-
12 ness in Kansas by the secretary of state which has corpus as shown on its
13 balance sheet at the end of the preceding taxable year as required to be
14 reported to the secretary of revenue of \$100,000 or more, such entity
15 shall pay an annual franchise tax to the secretary of revenue at the rate
16 of .125% of the corpus as shown on its balance sheet at the end of the
17 preceding taxable year as required to be reported to the secretary of
18 revenue or in the case of a foreign business trust which has a corpus
19 which is located in or which it uses or intends to use in this state as shown
20 on its balance sheet at the end of the preceding taxable year as required
21 to be reported to the secretary of revenue of \$100,000 or more, .125%
22 of that portion of the corpus which is located in or which it uses or intends
23 to use in this state as shown on its balance sheet at the end of the pre-
24 ceding taxable year as required to be reported to the secretary of revenue,
25 except that the annual franchise tax for any such entity shall not exceed
26 \$20,000. Such balance sheet shall be as of the end of the tax period,
27 certified by the trustee, fairly and truly reflecting the trust assets and
28 liabilities and specifically setting out its corpus, and, in the case of a for-
29 eign business trust, fairly and truly reflecting an allocation of its moneys
30 and other assets as between those located, used or to be used, in this
31 state and those located, used or to be used elsewhere.

32 (b) (1) Every corporation or association, business trust, limited lia-
33 bility company, limited partnership or limited liability partnership subject
34 to taxation under this act, regardless of whether such entity has a franchise
35 tax liability, shall make a return, stating specifically such information as
36 may be required by the forms, rules and regulations of the secretary of
37 revenue, which return shall include a balance sheet listing all assets and
38 liabilities as of the end of the tax year, as reported in the federal income
39 tax return on form 1120 or, if no such federal return is required to be
40 filed, such balance sheet information as otherwise required by the sec-
41 retary, and such further information showing the allocation or apportion-
42 ment calculations in computing the amount of the franchise tax. The
43 return of a corporation or association shall be signed by the president,

1 vice-president, treasurer, assistant treasurer, chief accounting officer or
2 any other officer so authorized to act. The fact that an individual's name
3 is signed on a return shall be *prima facie* evidence that such individual is
4 authorized to sign such return on behalf of such corporation. In cases
5 where receivers, trustees in bankruptcy or assignees are operating the
6 property or business of corporations, such receivers, trustees, or assignees
7 shall make returns for such corporations in the same manner and form
8 as corporations are required to make returns. Any tax due on the basis of
9 such returns shall be collected in the same manner as if collected from
10 the corporation for which the return is made. The returns of a limited
11 liability partnership shall be signed by a partner of the limited liability
12 partnership. The returns of a limited liability company shall be signed by
13 a member of the limited liability company.

14 (2) All returns shall be filed in the office of the director of taxation
15 on or before the 15th day of the fourth month following the close of the
16 taxable year, except as provided in subsection (b) (3).

17 (3) The director of taxation may grant a reasonable extension of time
18 for filing returns in accordance with rules and regulations of the secretary
19 of revenue. Whenever any such extension of time to file is requested by
20 a taxpayer and granted by the director, no penalty authorized by K.S.A.
21 79-3228, and amendments thereto, shall be imposed if 90% of the liability
22 is paid on or before the original due date.

23 (c) (1) All taxes imposed under the provisions of the Kansas franchise
24 tax act shall be paid on the 15th day of the fourth month following the
25 close of the taxable year. When the tax as shown to be due on a return is
26 less than \$5, such tax shall be canceled and no payment need be remitted
27 by the taxpayer.

28 (2) The director of taxation may extend the time for payment of the
29 tax, or any installment thereof, for a reasonable period of time not to
30 exceed six months from the date fixed for payment thereof. Such exten-
31 sion may exceed six months in the case of a taxpayer who is abroad.
32 Interest shall be charged at the rate prescribed by K.S.A. 79-2968, and
33 amendments thereto, for the period of such extension.

34 (d) The provisions of K.S.A. 79-3226, 79-3228, 79-3228a, 79-3229,
35 79-3230, 79-3233, 79-3233a, 79-3233b, 79-3233g, 79-3233h, 79-3233i,
36 79-3234, 79-3235 and 79-3236, and amendments thereto, shall apply to
37 the administration and enforcement of this section.

38 (e) All taxes paid pursuant to the provisions of this act shall be
39 rounded off to the nearest \$1, and unless other disposition is specifically
40 provided by law, the taxes collected under the provisions of this act and
41 all overpayments which may not be refunded under this section shall be
42 remitted to the state treasurer in accordance with the provisions of K.S.A.
43 75-4215, and amendments thereto. Upon receipt of each such remittance,

1 the state treasurer shall deposit the entire amount in the state treasury
2 to the credit of the state general fund. The secretary of revenue shall not
3 refund any overpayment of franchise taxes which is equal to \$5 or less,
4 shall not credit any domestic corporation or foreign corporation, associ-
5 ation, business trust, limited liability company, limited partnership or lim-
6 ited liability partnership with any amount which may not be refunded
7 under this section, and shall not require reimbursement for any under-
8 payment of franchise taxes which is less than \$5. Franchise tax refunds
9 shall be paid to the claimant from the income tax refund fund upon war-
10 rants of the director of accounts and reports pursuant to vouchers ap-
11 proved by the director of taxation, but no warrant issued hereunder shall
12 be drawn in an amount less than \$5. No interest shall be allowed on any
13 payment made to a claimant pursuant to this act.

14 (f) (1) *In addition to any other penalties provided by law, the failure*
15 *of any corporation, association, business trust, limited liability company,*
16 *limited partnership or limited liability partnership subject to taxation un-*
17 *der this act to file a return, regardless of whether such entity has a fran-*
18 *chise tax liability, or pay any franchise tax liability, within 90 days from*
19 *the due date for filing the return, taking into account any extension au-*
20 *thorized pursuant to subsection (b)(3), shall result in a forfeiture of the*
21 *articles of corporation of such entity or a forfeiture of such entity's right*
22 *or authority to do business in this state as provided in this subsection.*
23 *The secretary of revenue, with information provided by the secretary of*
24 *state, shall identify all entities that are subject to taxation under this act*
25 *and required to file returns, regardless of whether such entities have fran-*
26 *chise tax liability. Within 60 days after the date such return or franchise*
27 *tax is due, taking into account any extension authorized pursuant to sub-*
28 *section (b)(3), the secretary of revenue shall notify any entity that has*
29 *failed to timely file such return or timely pay in full such franchise tax*
30 *liability that its articles of incorporation or authority to do business in*
31 *this state shall be forfeited unless such return is filed or franchise tax*
32 *liability is paid within 90 days from the date such report and taxes were*
33 *due. Any entity subject to taxation under this act, regardless of whether*
34 *such entity has a franchise tax liability, that fails to file such return or*
35 *pay such taxes within such time frame shall forfeit its articles of incor-*
36 *poration or authority to do business in this state, and the secretary of*
37 *state shall publish a notice of such forfeiture in the Kansas register, after*
38 *receipt of notification from the secretary of revenue of any entity that has*
39 *failed to timely file such return or pay such taxes.*

40 (2) *Whenever the articles of incorporation or authority to do business*
41 *in this state has been revoked for failure to file a franchise tax return or*
42 *pay the required franchise taxes, such articles of incorporation or au-*
43 *thority may be reinstated by filing a certificate of reinstatement, in the*

1 manner and form to be prescribed by the secretary of state, and filing the
2 return with and paying such taxes, including interest and penalties, to the
3 secretary of revenue. For any such certificate of reinstatement received
4 by the secretary of state, the secretary of revenue shall verify to the sec-
5 retary of state the receipt of such return and payment of such taxes prior
6 to reinstatement. The fee for filing a certificate of reinstatement shall be
7 the same as that prescribed by K.S.A. 17-7506, and amendments thereto,
8 for filing a certificate of extension, restoration, renewal or revival of a
9 corporation's articles of incorporation. When reinstatement is effective, it
10 relates back to and takes effect as of the effective date of the forfeiture
11 and the entity seeking such reinstatement may resume business as if the
12 forfeiture had never occurred.

13 (g) As used in this section: (1) "Act" means the Kansas franchise tax
14 act;

15 (2) "net book value as calculated on an income tax basis located in or
16 used in this state" means the net book value of a limited liability company
17 multiplied by a percentage which is the average of the following three
18 percentages: (A) The average value of the limited liability company's real
19 and tangible personal property owned or rented and used in this state
20 during the next preceding tax period divided by the average total value
21 of the limited liability company's real and tangible personal property
22 owned or rented and used during the next preceding tax period; (B) the
23 total amount of compensation paid by the limited liability company in this
24 state during the next preceding tax period divided by the total amount of
25 compensation paid everywhere by the limited liability company during
26 the next preceding tax period; and (C) the total sales of the limited liability
27 company in this state during the next preceding tax period divided by the
28 total sales of the limited liability company everywhere during the next
29 preceding tax period. If a limited liability company has no real and tan-
30 gible property owned or rented and used, compensation paid or sales
31 made for the preceding tax period, then the average percentage shall be
32 determined by using only those percentages for property, compensation
33 and sales which reflect property or activity;

34 (3) "net capital accounts located in or used in this state" means the
35 net capital accounts of a limited partnership or limited liability partner-
36 ship as stated on the federal income tax return multiplied by a percentage
37 which is the average of the following three percentages: (A) The average
38 value of such entity's real and tangible personal property owned or rented
39 and used in this state during the next preceding tax period divided by the
40 average total value of such entity's real and tangible personal property
41 owned or rented and used during the next preceding tax period; (B) the
42 total amount of compensation paid by such entity in this state during the
43 next preceding tax period divided by the total amount of compensation

1 paid everywhere by such entity during the next preceding tax period; and
2 (C) the total sales of such entity in this state during the next preceding
3 tax period divided by the total sales of such entity everywhere during the
4 next preceding tax period. If such entity has no real and tangible personal
5 property owned or rented and used, compensation paid or sales made for
6 the preceding tax period, then the average percentage shall be deter-
7 mined by using only those percentages for property, compensation and
8 sales which reflect property or activity;

9 (4) “shareholder’s equity” means the sum of: (1) Paid-in capital stock,
10 except that paid-in capital stock shall not include any capital stock issued
11 by a corporation and reacquired by such corporation through gift, pur-
12 chase or otherwise and available for resale or retirement; (2) capital paid
13 in, in excess of par; and (3) retained earnings, all as stated on such cor-
14 poration’s federal income tax return;

15 (5) “shareholder’s equity attributable to Kansas” means the share-
16 holder’s equity of a corporation multiplied by a percentage which is the
17 average of the following three percentages: (A) The average value of the
18 corporation’s real and tangible personal property owned or rented and
19 used in this state during the next preceding tax period divided by the
20 average total value of the corporation’s real and tangible personal property
21 owned or rented and used during the next preceding tax period; (B) the
22 total amount of compensation paid by the corporation in this state during
23 the next preceding tax period divided by the total amount of compensa-
24 tion paid everywhere by the corporation during the next preceding tax
25 period; and (C) the total sales of the corporation in this state during the
26 next preceding tax period divided by the total sales of the corporation
27 everywhere during the next preceding tax period. If a corporation has no
28 real and tangible personal property owned or rented and used, compen-
29 sation paid or sales made for the preceding tax period, then the average
30 percentage shall be determined by using only those percentages for prop-
31 erty, compensation and sales which reflect property or activity; and

32 (6) “taxable equity attributable to Kansas” means shareholder’s equity
33 attributable to Kansas.

34 ~~(g)~~ (h) The provisions of this section shall apply to all tax years com-
35 mencing after December 31, 2003.

36 ~~(h)~~ (i) The provisions of this section shall be known and may be cited
37 as the Kansas franchise tax act.

38 Sec. 3. K.S.A. 2004 Supp. 17-7511 and 79-5401 are hereby repealed.

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