

HOUSE BILL No. 2432

By Committee on Taxation

2-7

9 AN ACT concerning taxation; relating to the franchise tax; rates; phase
10 out; amending K.S.A. 2006 Supp. 79-5401 and repealing the existing
11 section.
12

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

14 Section 1. K.S.A. 2006 Supp. 79-5401 is hereby amended to read as
15 follows: 79-5401. (a) (1) *Subject to the limitations provided in subsection*
16 *(g), for any foreign or domestic for profit corporation, or professional*
17 *corporation or association, duly registered and authorized to do business*
18 *in Kansas by the secretary of state and which has taxable equity attrib-*
19 *utable to Kansas of ~~\$100,000~~ \$3,000,000 or more, such entity shall pay*
20 *an annual franchise tax to the secretary of revenue for tax years com-*
21 *mencing after December 31, 2005, and December 31, 2006, at the rate of*
22 *.125%, and for the tax year commencing after December 31, 2007, at the*
23 *rate of .0625%, of such entity's taxable equity attributable to Kansas, ex-*
24 *cept that such annual franchise tax for any such entity shall not exceed*
25 *\$20,000.*

26 (2) *Subject to the limitations provided in subsection (g), for any for-*
27 *foreign or domestic limited liability company, foreign or domestic limited*
28 *partnership or foreign or domestic limited liability partnership duly reg-*
29 *istered and authorized to do business in Kansas by the secretary of state*
30 *and which has net capital accounts located in or used in this state at the*
31 *end of the taxable year as required to be reported on the federal part-*
32 *nership return of income of ~~\$100,000~~ \$3,000,000 or more, such entity*
33 *shall pay an annual franchise tax to the secretary of revenue for tax years*
34 *commencing after December 31, 2005, and December 31, 2006, at the*
35 *rate of .125%, and for the tax year commencing after December 31, 2007,*
36 *at the rate of .0625%, of the net capital accounts located in or used in*
37 *this state at the end of the taxable year as required to be reported on the*
38 *federal partnership return of income, or for a one-member LLC taxed as*
39 *a sole proprietorship which has net book value of the LLC as calculated*
40 *on an income tax basis located in or used in this state at the end of the*
41 *taxable year of ~~\$100,000~~ \$3,000,000 or more, for tax years commencing*
42 *after December 31, 2005, and December 31, 2006, at the rate of .125%,*
43 *and for the tax year commencing after December 31, 2007, at the rate of*

1 .0625%, of net book value of the LLC as calculated on an income tax
2 basis located in or used in this state at the end of the taxable year, except
3 that such annual franchise tax for any such entity shall not exceed \$20,000.
4 (3) *Subject to the limitations provided in subsection (g)*, for any busi-
5 ness trust duly registered and authorized to do business in Kansas by the
6 secretary of state and which has corpus as shown on its balance sheet at
7 the end of the taxable year as required to be reported to the secretary of
8 revenue of ~~\$100,000~~ \$3,000,000 or more, such entity shall pay an annual
9 franchise tax to the secretary of revenue *for tax years commencing after*
10 *December 31, 2005, and December 31, 2006, at the rate of .125%, and*
11 *for the tax year commencing after December 31, 2007, at the rate of*
12 *.0625%*, of the corpus as shown on its balance sheet at the end of the
13 taxable year as required to be reported to the secretary of revenue or in
14 the case of a foreign business trust which has a corpus which is located
15 in or which it uses or intends to use in this state as shown on its balance
16 sheet at the end of the taxable year as required to be reported to the
17 secretary of revenue of ~~\$100,000~~ \$3,000,000 or more, *for tax years com-*
18 *mencing after December 31, 2005, and December 31, 2006, at the rate of*
19 *.125%, and for the tax year commencing after December 31, 2007, at the*
20 *rate of .0625%*, of that portion of the corpus which is located in or which
21 it uses or intends to use in this state as shown on its balance sheet at the
22 end of the taxable year as required to be reported to the secretary of
23 revenue, except that the annual franchise tax for any such entity shall not
24 exceed \$20,000. Such balance sheet shall be as of the end of the tax
25 period, certified by the trustee, fairly and truly reflecting the trust assets
26 and liabilities and specifically setting out its corpus, and, in the case of a
27 foreign business trust, fairly and truly reflecting an allocation of its moneys
28 and other assets as between those located, used or to be used, in this
29 state and those located, used or to be used elsewhere.
30 (b) (1) Every corporation or association, business trust, limited lia-
31 bility company, limited partnership or limited liability partnership subject
32 to taxation under this act, regardless of whether such entity has a franchise
33 tax liability, shall make a return, stating specifically such information as
34 may be required by the forms, rules and regulations of the secretary of
35 revenue, which return shall include a balance sheet listing all assets and
36 liabilities as of the end of the tax year, as reported in the federal income
37 tax return on form 1120 or, if no such federal return is required to be
38 filed, such balance sheet information as otherwise required by the sec-
39 retary, and such further information showing the allocation or apportion-
40 ment calculations in computing the amount of the franchise tax. The
41 return of a corporation or association shall be signed by the president,
42 vice-president, treasurer, assistant treasurer, chief accounting officer or
43 any other officer so authorized to act. The fact that an individual's name

1 is signed on a return shall be *prima facie* evidence that such individual is
2 authorized to sign such return on behalf of such corporation. In cases
3 where receivers, trustees in bankruptcy or assignees are operating the
4 property or business of corporations, such receivers, trustees, or assignees
5 shall make returns for such corporations in the same manner and form
6 as corporations are required to make returns. Any tax due on the basis of
7 such returns shall be collected in the same manner as if collected from
8 the corporation for which the return is made. The returns of a limited
9 liability partnership shall be signed by a partner of the limited liability
10 partnership. The returns of a limited liability company shall be signed by
11 a member of the limited liability company.

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

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

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

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

32 (d) The provisions of K.S.A. 79-3226, 79-3228, 79-3228a, 79-3229,
33 79-3230, 79-3233, 79-3233a, 79-3233b, 79-3233g, 79-3233h, 79-3233i,
34 79-3234, 79-3235 and 79-3236, and amendments thereto, shall apply to
35 the administration and enforcement of this section.

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

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

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

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

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

1 period. If such entity has no real and tangible personal property owned
2 or rented and used, compensation paid or sales made for the tax period,
3 then the average percentage shall be determined by using only those
4 percentages for property, compensation and sales which reflect property
5 or activity;

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

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

28 (6) “taxable equity attributable to Kansas” means shareholder’s equity
29 attributable to Kansas.

30 (g) The provisions of this section shall apply to all tax years com-
31 mencing after December 31, 2003, *but shall not apply to any tax year*
32 *commencing after December 31, 2008.*

33 (h) The provisions of this section shall be known and may be cited as
34 the Kansas franchise tax act.

35 Sec. 2. K.S.A. 2006 Supp. 79-5401 is hereby repealed.

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