

## HOUSE BILL No. 2261

By Representative Talia

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9 AN ACT concerning income taxation; relating to deductions; withdrawals  
10 from retirement accounts; amounts used as collateral; prescribing cer-  
11 tain duties of secretary of commerce; amending K.S.A. 2008 Supp. 79-  
12 32,117 and repealing the existing section; also repealing K.S.A. 2008  
13 Supp. 79-32,117m.  
14

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

16 New Section 1. (a) A taxpayer shall make application for approval of  
17 any amounts withdrawn or used as collateral on a loan from a retirement  
18 account by such taxpayer and shall certify to the secretary of revenue that  
19 any such amounts withdrawn or used as collateral on a loan has been done  
20 so in compliance with the provisions of this section and subsection (c)(xxi)  
21 of K.S.A. 79-32,117, and amendments thereto. In the determination of  
22 the application, the secretary shall consider and analyze financial state-  
23 ments of the business over the past five years, credit scores and the debt-  
24 to-income ratio of the business and owner and appropriate income tax  
25 forms of the business. The secretary is authorized to obtain any and all  
26 information necessary to determine such compliance. Information ob-  
27 tained under this section shall not be subject to disclosure pursuant to  
28 K.S.A. 45-215 et seq., and amendments thereto, but shall upon request  
29 be made available to the legislative post audit division. The secretary of  
30 revenue shall provide necessary information to the secretary of com-  
31 merce. The secretary of commerce shall certify to the secretary of revenue  
32 that the application required by this section has been approved for such  
33 taxpayer.

34 (b) As used in this section and subsection (c)(xxi) of K.S.A. 79-32,117,  
35 and amendments thereto: (1) "Qualifying legitimate business expense"  
36 includes, but is not limited to, expenses creating jobs, meeting payroll,  
37 paying vendors, paying liens and leases, making employee contributions  
38 to retirement accounts, making reasonable investments in machinery and  
39 equipment which replace inoperable machinery and equipment necessary  
40 for the continuance of the business, paying existing employee insurance  
41 premiums not including benefit increases or coverage expansion, making  
42 reasonable cost-of-living adjustments after a pay raise freeze, paying un-  
43 employment or other business taxes and paying contributions for workers

1 compensation; and

2 (2) “qualifying business” means a corporation, limited liability com-  
3 pany, limited liability partnership, general partnership or sole proprietor-  
4 ship which is not a publicly traded company or business employing at  
5 least 10 employees but not more than 150 employees, which has been in  
6 business for at least five years.

7 (c) The secretary of commerce shall adopt rules and regulations neces-  
8 sary to carry out the provisions of this section and subsection (c)(xxi) of  
9 K.S.A. 79-32,117.

10 Sec. 2. K.S.A. 2008 Supp. 79-32,117 is hereby amended to read as  
11 follows: 79-32,117. (a) The Kansas adjusted gross income of an individual  
12 means such individual’s federal adjusted gross income for the taxable year,  
13 with the modifications specified in this section.

14 (b) There shall be added to federal adjusted gross income:

15 (i) Interest income less any related expenses directly incurred in the  
16 purchase of state or political subdivision obligations, to the extent that  
17 the same is not included in federal adjusted gross income, on obligations  
18 of any state or political subdivision thereof, but to the extent that interest  
19 income on obligations of this state or a political subdivision thereof issued  
20 prior to January 1, 1988, is specifically exempt from income tax under the  
21 laws of this state authorizing the issuance of such obligations, it shall be  
22 excluded from computation of Kansas adjusted gross income whether or  
23 not included in federal adjusted gross income. Interest income on obli-  
24 gations of this state or a political subdivision thereof issued after Decem-  
25 ber 31, 1987, shall be excluded from computation of Kansas adjusted  
26 gross income whether or not included in federal adjusted gross income.

27 (ii) Taxes on or measured by income or fees or payments in lieu of  
28 income taxes imposed by this state or any other taxing jurisdiction to the  
29 extent deductible in determining federal adjusted gross income and not  
30 credited against federal income tax. This paragraph shall not apply to taxes  
31 imposed under the provisions of K.S.A. 79-1107 or 79-1108, and amend-  
32 ments thereto, for privilege tax year 1995, and all such years thereafter.

33 (iii) The federal net operating loss deduction.

34 (iv) Federal income tax refunds received by the taxpayer if the de-  
35 duction of the taxes being refunded resulted in a tax benefit for Kansas  
36 income tax purposes during a prior taxable year. Such refunds shall be  
37 included in income in the year actually received regardless of the method  
38 of accounting used by the taxpayer. For purposes hereof, a tax benefit  
39 shall be deemed to have resulted if the amount of the tax had been de-  
40 ducted in determining income subject to a Kansas income tax for a prior  
41 year regardless of the rate of taxation applied in such prior year to the  
42 Kansas taxable income, but only that portion of the refund shall be in-  
43 cluded as bears the same proportion to the total refund received as the

- 1 federal taxes deducted in the year to which such refund is attributable  
2 bears to the total federal income taxes paid for such year. For purposes  
3 of the foregoing sentence, federal taxes shall be considered to have been  
4 deducted only to the extent such deduction does not reduce Kansas tax-  
5 able income below zero.
- 6 (v) The amount of any depreciation deduction or business expense  
7 deduction claimed on the taxpayer's federal income tax return for any  
8 capital expenditure in making any building or facility accessible to the  
9 handicapped, for which expenditure the taxpayer claimed the credit al-  
10 lowed by K.S.A. 79-32,177, and amendments thereto.
- 11 (vi) Any amount of designated employee contributions picked up by  
12 an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965,  
13 and amendments to such sections.
- 14 (vii) The amount of any charitable contribution made to the extent  
15 the same is claimed as the basis for the credit allowed pursuant to K.S.A.  
16 79-32,196, and amendments thereto.
- 17 (viii) The amount of any costs incurred for improvements to a swine  
18 facility, claimed for deduction in determining federal adjusted gross in-  
19 come, to the extent the same is claimed as the basis for any credit allowed  
20 pursuant to K.S.A. 2008 Supp. 79-32,204 and amendments thereto.
- 21 (ix) The amount of any ad valorem taxes and assessments paid and  
22 the amount of any costs incurred for habitat management or construction  
23 and maintenance of improvements on real property, claimed for deduc-  
24 tion in determining federal adjusted gross income, to the extent the same  
25 is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203  
26 and amendments thereto.
- 27 (x) Amounts received as nonqualified withdrawals, as defined by  
28 K.S.A. 2008 Supp. 75-643, and amendments thereto, if, at the time of  
29 contribution to a family postsecondary education savings account, such  
30 amounts were subtracted from the federal adjusted gross income pur-  
31 suant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and amend-  
32 ments thereto, or if such amounts are not already included in the federal  
33 adjusted gross income.
- 34 (xi) The amount of any contribution made to the same extent the  
35 same is claimed as the basis for the credit allowed pursuant to K.S.A.  
36 2008 Supp. 74-50,154, and amendments thereto.
- 37 (xii) For taxable years commencing after December 31, 2004,  
38 amounts received as withdrawals not in accordance with the provisions  
39 of K.S.A. 2008 Supp. 74-50,204, and amendments thereto, if, at the time  
40 of contribution to an individual development account, such amounts were  
41 subtracted from the federal adjusted gross income pursuant to paragraph  
42 (xiii) of subsection (c), or if such amounts are not already included in the  
43 federal adjusted gross income.

- 1 (xiii) The amount of any expenditures claimed for deduction in de-  
2 termining federal adjusted gross income, to the extent the same is claimed  
3 as the basis for any credit allowed pursuant to K.S.A. 2008 Supp. 79-  
4 32,217 through 79-32,220 or 79-32,222, and amendments thereto.
- 5 (xiv) The amount of any amortization deduction claimed in deter-  
6 mining federal adjusted gross income to the extent the same is claimed  
7 for deduction pursuant to K.S.A. 2008 Supp. 79-32,221, and amendments  
8 thereto.
- 9 (xv) The amount of any expenditures claimed for deduction in deter-  
10 mining federal adjusted gross income, to the extent the same is claimed  
11 as the basis for any credit allowed pursuant to K.S.A. 2008 Supp. 79-  
12 32,223 through 79-32,226, 79-32,228 through 79-32,231, 79-32,233  
13 through 79-32,236, 79-32,238 through 79-32,241, 79-32,245 through 79-  
14 32,248 or 79-32,251 through 79-32,254, and amendments thereto.
- 15 (xvi) The amount of any amortization deduction claimed in deter-  
16 mining federal adjusted gross income to the extent the same is claimed  
17 for deduction pursuant to K.S.A. 2008 Supp. 79-32,227, 79-32,232, 79-  
18 32,237, 79-32,249, 79-32,250 or 79-32,255, and amendments thereto.
- 19 (xvii) The amount of any amortization deduction claimed in deter-  
20 mining federal adjusted gross income to the extent the same is claimed  
21 for deduction pursuant to K.S.A. 2008 Supp. 79-32,256, and amendments  
22 thereto.
- 23 (xviii) For taxable years commencing after December 31, 2006, the  
24 amount of any ad valorem or property taxes and assessments paid to a  
25 state other than Kansas or local government located in a state other than  
26 Kansas by a taxpayer who resides in a state other than Kansas, when the  
27 law of such state does not allow a resident of Kansas who earns income  
28 in such other state to claim a deduction for ad valorem or property taxes  
29 or assessments paid to a political subdivision of the state of Kansas in  
30 determining taxable income for income tax purposes in such other state,  
31 to the extent that such taxes and assessments are claimed as an itemized  
32 deduction for federal income tax purposes.
- 33 (c) There shall be subtracted from federal adjusted gross income:
- 34 (i) Interest or dividend income on obligations or securities of any  
35 authority, commission or instrumentality of the United States and its pos-  
36 sessions less any related expenses directly incurred in the purchase of  
37 such obligations or securities, to the extent included in federal adjusted  
38 gross income but exempt from state income taxes under the laws of the  
39 United States.
- 40 (ii) Any amounts received which are included in federal adjusted  
41 gross income but which are specifically exempt from Kansas income tax-  
42 ation under the laws of the state of Kansas.
- 43 (iii) The portion of any gain or loss from the sale or other disposition

- 1 of property having a higher adjusted basis for Kansas income tax purposes  
2 than for federal income tax purposes on the date such property was sold  
3 or disposed of in a transaction in which gain or loss was recognized for  
4 purposes of federal income tax that does not exceed such difference in  
5 basis, but if a gain is considered a long-term capital gain for federal in-  
6 come tax purposes, the modification shall be limited to that portion of  
7 such gain which is included in federal adjusted gross income.
- 8 (iv) The amount necessary to prevent the taxation under this act of  
9 any annuity or other amount of income or gain which was properly in-  
10 cluded in income or gain and was taxed under the laws of this state for a  
11 taxable year prior to the effective date of this act, as amended, to the  
12 taxpayer, or to a decedent by reason of whose death the taxpayer acquired  
13 the right to receive the income or gain, or to a trust or estate from which  
14 the taxpayer received the income or gain.
- 15 (v) The amount of any refund or credit for overpayment of taxes on  
16 or measured by income or fees or payments in lieu of income taxes im-  
17 posed by this state, or any taxing jurisdiction, to the extent included in  
18 gross income for federal income tax purposes.
- 19 (vi) Accumulation distributions received by a taxpayer as a beneficiary  
20 of a trust to the extent that the same are included in federal adjusted  
21 gross income.
- 22 (vii) Amounts received as annuities under the federal civil service  
23 retirement system from the civil service retirement and disability fund  
24 and other amounts received as retirement benefits in whatever form  
25 which were earned for being employed by the federal government or for  
26 service in the armed forces of the United States.
- 27 (viii) Amounts received by retired railroad employees as a supple-  
28 mental annuity under the provisions of 45 U.S.C. 228b (a) and 228c (a)(1)  
29 et seq.
- 30 (ix) Amounts received by retired employees of a city and by retired  
31 employees of any board of such city as retirement allowances pursuant to  
32 K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter  
33 ordinance exempting a city from the provisions of K.S.A. 13-14,106, and  
34 amendments thereto.
- 35 (x) For taxable years beginning after December 31, 1976, the amount  
36 of the federal tentative jobs tax credit disallowance under the provisions  
37 of 26 U.S.C. 280 C. For taxable years ending after December 31, 1978,  
38 the amount of the targeted jobs tax credit and work incentive credit dis-  
39 allowances under 26 U.S.C. 280 C.
- 40 (xi) For taxable years beginning after December 31, 1986, dividend  
41 income on stock issued by Kansas Venture Capital, Inc.
- 42 (xii) For taxable years beginning after December 31, 1989, amounts  
43 received by retired employees of a board of public utilities as pension and

1 retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249  
2 and amendments thereto.

3 (xiii) For taxable years beginning after December 31, 2004, amounts  
4 contributed to and the amount of income earned on contributions de-  
5 posited to an individual development account under K.S.A. 2008 Supp.  
6 74-50,201, et seq., and amendments thereto.

7 (xiv) For all taxable years commencing after December 31, 1996, that  
8 portion of any income of a bank organized under the laws of this state or  
9 any other state, a national banking association organized under the laws  
10 of the United States, an association organized under the savings and loan  
11 code of this state or any other state, or a federal savings association or-  
12 ganized under the laws of the United States, for which an election as an  
13 S corporation under subchapter S of the federal internal revenue code is  
14 in effect, which accrues to the taxpayer who is a stockholder of such  
15 corporation and which is not distributed to the stockholders as dividends  
16 of the corporation.

17 (xv) For all taxable years beginning after December 31, 2006,  
18 amounts not exceeding \$3,000, or \$6,000 for a married couple filing a  
19 joint return, for each designated beneficiary which are contributed to a  
20 family postsecondary education savings account established under the  
21 Kansas postsecondary education savings program or a qualified tuition  
22 program established and maintained by another state or agency or instru-  
23 mentality thereof pursuant to section 529 of the internal revenue code of  
24 1986, as amended, for the purpose of paying the qualified higher edu-  
25 cation expenses of a designated beneficiary at an institution of postsec-  
26 ondary education. The terms and phrases used in this paragraph shall have  
27 the meaning respectively ascribed thereto by the provisions of K.S.A.  
28 2008 Supp. 75-643, and amendments thereto, and the provisions of such  
29 section are hereby incorporated by reference for all purposes thereof.

30 (xvi) For the tax year beginning after December 31, 2004, an amount  
31 not exceeding \$500; for the tax year beginning after December 31, 2005,  
32 an amount not exceeding \$600; for the tax year beginning after December  
33 31, 2006, an amount not exceeding \$700; for the tax year beginning after  
34 December 31, 2007, an amount not exceeding \$800; for the tax year  
35 beginning December 31, 2008, an amount not exceeding \$900; and for  
36 all taxable years commencing after December 31, 2009, an amount not  
37 exceeding \$1,000 of the premium costs for qualified long-term care in-  
38 surance contracts, as defined by subsection (b) of section 7702B of public  
39 law 104-191.

40 (xvii) For all taxable years beginning after December 31, 2004,  
41 amounts received by taxpayers who are or were members of the armed  
42 forces of the United States, including service in the Kansas army and air  
43 national guard, as a recruitment, sign up or retention bonus received by

1 such taxpayer as an incentive to join, enlist or remain in the armed services  
2 of the United States, including service in the Kansas army and air national  
3 guard, and amounts received for repayment of educational or student  
4 loans incurred by or obligated to such taxpayer and received by such  
5 taxpayer as a result of such taxpayer's service in the armed forces of the  
6 United States, including service in the Kansas army and air national guard.  
7 (xviii) For all taxable years beginning after December 31, 2004,  
8 amounts received by taxpayers who are eligible members of the Kansas  
9 army and air national guard as a reimbursement pursuant to K.S.A. 48-  
10 281, and amendments thereto, and amounts received for death benefits  
11 pursuant to K.S.A. 48-282, and amendments thereto, or pursuant to sec-  
12 tion 1 or section 2 of chapter 207 of the 2005 session laws of Kansas, and  
13 amendments thereto, to the extent that such death benefits are included  
14 in federal adjusted gross income of the taxpayer.  
15 (xix) For the taxable year beginning after December 31, 2006,  
16 amounts received as benefits under the federal social security act which  
17 are included in federal adjusted gross income of a taxpayer with federal  
18 adjusted gross income of \$50,000 or less, whether such taxpayer's filing  
19 status is single, head of household, married filing separate or married  
20 filing jointly; and for all taxable years beginning after December 31, 2007,  
21 amounts received as benefits under the federal social security act which  
22 are included in federal adjusted gross income of a taxpayer with federal  
23 adjusted gross income of \$75,000 or less, whether such taxpayer's filing  
24 status is single, head of household, married filing separate or married  
25 filing jointly.  
26 (xx) *Amounts received by retired employees of Washburn university*  
27 *as retirement and pension benefits under the university's retirement plan.*  
28 (xxi) *For all taxable years 2009, 2010 and 2011, amounts withdrawn*  
29 *or used as collateral on a loan from any retirement account where con-*  
30 *tributions to such account are exempt from taxation under the federal*  
31 *internal revenue code, if any such amount withdrawn or amount used as*  
32 *collateral on a loan is used by the taxpayer for qualifying legitimate busi-*  
33 *ness expenses in a qualifying business of the taxpayer as determined by*  
34 *the secretary of commerce as provided in section 1, and amendments*  
35 *thereto. The provisions of this subsection shall not be applicable to any*  
36 *such amount withdrawn that is not recontributed to such taxpayer's re-*  
37 *retirement account or any such amount used as collateral on a loan in which*  
38 *such collateral was released from the retirement account from which such*  
39 *amount was withdrawn or used as collateral for the purposes described*  
40 *in this subsection within 10 years of the qualified withdrawal or qualified*  
41 *loan security in not more than 40 equal installments over such 10-year*  
42 *period or to any amount withdrawn or amount used as collateral on a*  
43 *loan which has not been certified by the secretary of commerce as required*

1 *pursuant to the provisions of section 1, and amendments thereto, prior to*  
2 *subtracting any such amount withdrawn or amount used as collateral on*  
3 *a loan from federal adjusted gross income pursuant to this subsection.*

4 (d) There shall be added to or subtracted from federal adjusted gross  
5 income the taxpayer's share, as beneficiary of an estate or trust, of the  
6 Kansas fiduciary adjustment determined under K.S.A. 79-32,135, and  
7 amendments thereto.

8 (e) The amount of modifications required to be made under this sec-  
9 tion by a partner which relates to items of income, gain, loss, deduction  
10 or credit of a partnership shall be determined under K.S.A. 79-32,131,  
11 and amendments thereto, to the extent that such items affect federal  
12 adjusted gross income of the partner.

13 Sec. 3. K.S.A. 2008 Supp. 79-32,117 and 79-32,117m are hereby  
14 repealed.

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