

HOUSE BILL No. 2557

By Committee on Taxation

1-31

1 AN ACT concerning income taxation; relating to penalties for certain
2 taxpayers who file incorrect returns; amending K.S.A. 2013 Supp. 79-
3 3228 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2013 Supp. 79-3228 is hereby amended to read as
7 follows: 79-3228. (a) For all taxable years ending prior to January 1, 2002,
8 if any taxpayer, without intent to evade the tax imposed by this act, shall
9 fail to file a return or pay the tax, if one is due, at the time required by or
10 under the provisions of this act, but shall voluntarily file a correct return of
11 income or pay the tax due within six months thereafter, there shall be
12 added to the tax an additional amount equal to 10% of the unpaid balance
13 of tax due plus interest at the rate prescribed by subsection (a) of K.S.A.
14 79-2968, and amendments thereto, from the date the tax was due until
15 paid.

16 (b) For all taxable years ending prior to January 1, 2002, if any
17 taxpayer fails voluntarily to file a return or pay the tax, if one is due,
18 within six months after the time required by or under the provisions of this
19 act, there shall be added to the tax an additional amount equal to 25% of
20 the unpaid balance of tax due plus interest at the rate prescribed by
21 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
22 the tax was due until paid. Notwithstanding the foregoing, in the event an
23 assessment is issued following a field audit for any period for which a
24 return was filed by the taxpayer and all of the tax was paid pursuant to
25 such return, a penalty shall be imposed for the period included in the
26 assessment in the amount of 10% of the unpaid balance of tax due shown
27 in the notice of assessment. If after review of a return for any period
28 included in the assessment, the secretary or secretary's designee
29 determines that the underpayment of tax was due to the failure of the
30 taxpayer to make a reasonable attempt to comply with the provisions of
31 this act, such penalty shall be imposed for the period included in the
32 assessment in the amount of 25% of the unpaid balance of tax due.

33 (c) For all taxable years ending after December 31, 2001, if any
34 taxpayer fails to file a return or pay the tax if one is due, at the time
35 required by or under the provisions of this act, there shall be added to the
36 tax an additional amount equal to 1% of the unpaid balance of the tax due

1 for each month or fraction thereof during which such failure continues, not
2 exceeding 24% in the aggregate, plus interest at the rate prescribed by
3 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
4 the tax was due until paid. Notwithstanding the foregoing, in the event an
5 assessment is issued following a field audit for any period for which a
6 return was filed by the taxpayer and all of the tax was paid pursuant to
7 such return, a penalty shall be imposed for the period included in the
8 assessment in an amount of 1% per month not exceeding 10% of the
9 unpaid balance of tax due shown in the notice of assessment. If after
10 review of a return for any period included in the assessment, the secretary
11 or secretary's designee determines that the underpayment of tax was due to
12 the failure of the taxpayer to make a reasonable attempt to comply with the
13 provisions of this act, such penalty shall be imposed for the period
14 included in the assessment in the amount of 25% of the unpaid balance of
15 tax due.

16 (d) *For all taxable years ending after December 31, 2013, if any*
17 *taxpayer who has failed to file a return* ~~or has filed an incorrect or~~
18 ~~insufficient return,~~ and after notice from the director refuses or neglects
19 within 20 days to file a proper return, the director shall determine the
20 income of such taxpayer according to the best available information and
21 assess the tax together with a penalty of 50% of the unpaid balance of tax
22 due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-
23 2968, and amendments thereto, from the date the tax was originally due to
24 the date of payment. *If, at any time, a taxpayer filed a return and paid in*
25 *full the tax due as stated on the return, at the time required by or under the*
26 *provisions of this act and subsequently is adjusted by the director, and a*
27 *notice of liability is sent to the taxpayer, no penalty shall be assessed*
28 *under the provisions of this subsection with respect to any underpayment*
29 *of income tax liability due to the adjustment if any such tax is paid within*
30 *30 days of such notice of liability. If any such tax is not paid within 30*
31 *days of original notice, the penalty provided under the provisions of this*
32 *subsection shall apply.*

33 (e) Any person, who with fraudulent intent, fails to pay any tax or to
34 make, render or sign any return, or to supply any information, within the
35 time required by or under the provisions of this act, shall be assessed a
36 penalty equal to the amount of the unpaid balance of tax due plus interest
37 at the rate prescribed by subsection (a) of K.S.A. 79-2968, and
38 amendments thereto, from the date the tax was originally due to the date of
39 payment. Such person shall also be guilty of a misdemeanor and shall,
40 upon conviction, be fined not more than \$1,000 or be imprisoned in the
41 county jail not less than 30 days nor more than one year, or both such fine
42 and imprisonment.

43 (f) Any person who willfully signs a fraudulent return shall be guilty

1 of a felony, and upon conviction thereof shall be punished by
2 imprisonment for a term not exceeding five years. The term "person" as
3 used in this section includes any agent of the taxpayer, and officer or
4 employee of a corporation or a member or employee of a partnership, who
5 as such officer, employee or member is under a duty to perform the act in
6 respect of which the violation occurs.

7 (g) (1) Whenever the secretary or the secretary's designee determines
8 that the failure of the taxpayer to comply with the provisions of
9 subsections (a), (b), (c) and (d) of this section was due to reasonable
10 causes, the secretary or the secretary's designee may waive or reduce any
11 of the penalties and may reduce the interest rate to the underpayment rate
12 prescribed and determined for the applicable period under section 6621 of
13 the federal internal revenue code as in effect on January 1, 1994, upon
14 making a record of the reasons therefor.

15 (2) No penalty shall be assessed hereunder with respect to any
16 underpayment of income tax liability reported on any amended return filed
17 by any taxpayer who at the time of filing pays such underpayment and
18 whose return is not being examined at the time of filing.

19 (3) No penalty assessed hereunder shall be collected if the taxpayer
20 has had the tax abated on appeal, and any penalty collected upon such tax
21 shall be refunded.

22 (h) In case of a nonresident or any officer or employee of a
23 corporation, the failure to do any act required by or under the provisions of
24 this act shall be deemed an act committed in part at the office of the
25 director.

26 (i) In the case of a nonresident individual, partnership or corporation,
27 the failure to do any act required by or under the provision of this act shall
28 prohibit such nonresident from being awarded any contract for
29 construction, reconstruction or maintenance or for the sale of materials and
30 supplies to the state of Kansas or any political subdivision thereof until
31 such time as such nonresident has fully complied with this act.

32 Sec. 2. K.S.A. 2013 Supp. 79-3228 is hereby repealed.

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