

Substitute for SENATE BILL No. 170

By Committee on Assessment and Taxation

3-26

AN ACT concerning the Kansas withholding tax act; amending K.S.A. 2002 Supp. 79-3295, 79-3298, 79-3299, 79-32,100, 79-32,100a, 79-32,100b and 79-32,100c and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 79-3295 is hereby amended to read as follows: 79-3295. (a) The term “employee” means a resident of this state as defined by subsection (b) of K.S.A. 79-32,109, and amendments thereto, performing services for an employer either within or without the state and a nonresident performing services within this state, and includes an officer, employee or elected official of the United States, a state, territory, or any political subdivision thereof or any agency or instrumentality thereof, and an officer of a corporation.

(b) The term “employer” means any person, firm, partnership, limited liability company, corporation, association, trust or fiduciary of any kind or other type organization qualifying as an employer for federal income tax withholding purposes and who maintains an office, transacts business in or derives any income from sources within the state of Kansas for whom an individual performs or performed any services, of whatever nature, as the employee of such employer, and who has control of the payment of wages for such services, or is the officer, agent or employee of the person having control of the payment of wages. It also includes the United States, the state and all political subdivisions thereof, and all agencies or instrumentalities of any of them.

(c) The term “distributee” means any person or organization who receives a distribution which is subject to withholding of income tax pursuant to this act.

(d) The term “distribution” means a distribution from a corporation for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect, from a limited liability company formed under the laws of the state of Kansas, or from a partnership.

(e) *The term “nonresident” means an individual domiciled outside of this state and an entity whose commercial domicile is outside of this state. For corporations, commercial domicile is as defined in K.S.A. 79-3271 and amendments thereto.*

1 (f) The term “payee” means any person or organization who receives
2 a payment other than wages, *or a payment of a pension, annuity or de-*
3 *ferred income*, which is subject to withholding of income tax pursuant to
4 this act.

5 (g) *The term “payer” means any person or organization, other than*
6 *an employer, who makes a payment other than wages, or a payment of a*
7 *pension, annuity or deferred income, which is subject to withholding of*
8 *income tax pursuant to this act.*

9 ~~(h)~~ (h) The term “payment other than wages” means a payment that
10 is ~~subject to federal income tax withholding and taxable under the Kansas~~
11 ~~income tax act, and that is a payment:~~

12 (1) For any supplemental unemployment compensation, annuity, or
13 sick pay;

14 (2) pursuant to a voluntary withholding agreement;

15 (3) of gambling winnings;

16 (4) of taxable payments of Indian casino profits;

17 (5) for any vehicle fringe benefit; *or*

18 ~~(6) of periodic payments of pensions, annuities, and other deferred~~
19 ~~income;~~

20 ~~—(7) of nonperiodic distributions of pensions, annuities, and other de-~~
21 ~~ferred income; or~~

22 ~~—(8) of eligible rollover distributions of pensions, annuities, and other~~
23 ~~deferred income of a management or consulting fee paid in the ordinary~~
24 ~~course of a trade, business or other for profit venture.~~

25 ~~(g) The term “payor” means any person or organization, other than~~
26 ~~an employer, who makes payments, other than wages or distributions,~~
27 ~~which are subject to withholding of income tax pursuant to this act.~~

28 ~~(h) (i) The term “pension, annuity or other deferred income” means~~
29 ~~a payment that is taxable under the Kansas income tax act, and that is a~~
30 ~~payment:~~

31 ~~(1) Of periodic payments of pensions, annuities and other deferred~~
32 ~~income;~~

33 ~~(2) of nonperiodic distributions of pensions, annuities and other de-~~
34 ~~ferred income; or~~

35 ~~(3) of eligible rollover distributions of pensions, annuities and other~~
36 ~~deferred income.~~

37 (j) The term “wages” means wages as defined by section 3401(a) of
38 the federal internal revenue code which are taxable under the Kansas
39 income tax act, ~~and shall include any prize or award paid to a professional~~
40 ~~athlete at a sporting event held in this state.~~

41 Sec. 2. K.S.A. 2002 Supp. 79-3298 is hereby amended to read as
42 follows: 79-3298. (a) Every employer ~~and payor, payer, person or organ-~~
43 ~~ization deducting and withholding tax shall remit the taxes and file returns~~

1 in accordance with the following provisions:-

2 (1) Whenever the total amount withheld exceeds \$100,000 in any
3 calendar year, the employer ~~or payor, payer, person or organization de-~~
4 ~~ducting and withholding tax~~ shall remit the taxes withheld in accordance
5 with the following schedule: Each calendar month shall be divided into
6 four remittance periods that end on the 7th, 15th, 21st and the last day
7 of such month. If at the end of any one or all of such remittance periods
8 the total undeposited taxes equal or exceed \$667, the taxes shall be re-
9 mitted within three banking days. Saturdays, Sundays and legal holidays
10 shall not be treated as banking days.

11 (2) Whenever the total amount withheld exceeds \$8,000 but does not
12 exceed \$100,000 in any calendar year, the employer ~~or payor, payer, per-~~
13 ~~son or organization deducting and withholding tax~~ shall remit the taxes
14 withheld for wages paid during the first 15 days of any month on or before
15 the 25th day of the month. The employer ~~or payor, payer, person or~~
16 ~~organization deducting and withholding tax~~ shall remit the taxes withheld
17 for wages paid during the remainder of that month on or before the 10th
18 day of the following month.

19 (3) Whenever the total amount withheld exceeds \$1,200 but does not
20 exceed \$8,000 in any calendar year, the employer ~~or payor, payer, person~~
21 ~~or organization deducting and withholding tax~~ shall remit the taxes with-
22 held during any month on or before the 15th day of the following month.

23 (4) Whenever the total amount withheld exceeds \$200 but does not
24 exceed \$1,200 in any calendar year, the employer ~~or payor, payer, person~~
25 ~~or organization deducting and withholding tax~~ shall remit the taxes with-
26 held in any calendar quarter on or before the 25th day of the first month
27 following the end of that calendar quarter.

28 (5) Whenever the total amount withheld does not exceed \$200 in any
29 calendar year, the employer ~~or payor, payer, person or organization de-~~
30 ~~ducting and withholding tax~~ shall remit the taxes withheld during that
31 year on or before January 25 of the following year.

32 (b) Each remittance required under the provisions of subsection (a)
33 shall be accompanied by a Kansas withholding tax remittance form pre-
34 scribed and furnished by the director.

35 (c) Every employer ~~or payor, payer, person or organization deducting~~
36 ~~and withholding tax~~ and making remittances pursuant to subsection (a)
37 shall file a return on a form prescribed and furnished by the director for
38 each calendar year on or before the last day of February of the following
39 year.

40 (d) The excess of any remittance over the actual taxes withheld in any
41 withholding period shall be credited against the liability for following
42 withholding periods until exhausted. A refund shall be allowed in accord-
43 ance with K.S.A. 79-32,105, and amendments thereto, where an over-

1 payment cannot be adjusted by an offset against the liability for a sub-
2 sequent withholding period.

3 (e) *For purposes of determining filing requirements*, determinations
4 of amounts withheld during a calendar year by employers ~~or payors for~~
5 ~~purposes of determining filing requirements~~, *payers, persons or organi-*
6 *zations deducting and withholding tax* shall be made by the director upon
7 the basis of amounts withheld by those employers ~~or payors~~, *payers, per-*
8 *sons or organizations* during the preceding calendar year or by estimates
9 in cases of employers ~~or payors~~, *payers, persons or organizations* having
10 no previous withholding histories. The director is hereby authorized to
11 modify the filing schedule for any employer ~~or payor~~, *payer, person or*
12 *organization deducting and withholding tax* when it is apparent that the
13 original determination was inaccurate.

14 (f) Whenever the director has cause to believe that money withheld
15 by an employer ~~or payor~~, *payer, person or organization deducting and*
16 *withholding tax* pursuant to this act may be converted, diverted, lost, or
17 otherwise not timely paid in accordance with this section, the director
18 shall have the power to require returns and payment from any such em-
19 ployer ~~or payor~~, *payer, person or organization* at any time at more fre-
20 quent intervals than prescribed by this section in order to secure full
21 payment to the state of all amounts withheld by such employer ~~or payor~~,
22 *payer, person or organization* in accordance with this act.

23 Sec. 3. K.S.A. 2002 Supp. 79-3299 is hereby amended to read as
24 follows: 79-3299. (a) Every employer ~~or payor shall~~, *payer, person or*
25 *organization deducting and withholding tax*, on or before January 31 of
26 each year, *shall* prepare a statement for each employee or payee on a
27 form prescribed by the director stating the amount of wages or payments
28 other than wages subject to Kansas income tax paid during the preceding
29 year, the total amount of tax withheld, if any, from such wages or pay-
30 ments other than wages by the employer ~~or payor~~, *payer, person or or-*
31 *ganization* pursuant to this act and such other information as may be
32 prescribed by the director. One copy of such statement shall be filed by
33 the employer ~~or payor~~, *payer, person or organization* with the division of
34 taxation on or before the last day of February of each year. Two copies
35 of such statement shall be given to the employee or payee concerned,
36 one of which will be filed by the employee or payee with the tax return
37 required by this chapter.

38 (b) In the case of an employee whose employment is terminated be-
39 fore the end of a calendar year, the statement required by subsection (a)
40 may be mailed at the time provided in that subsection to the last known
41 address of the employee, or issued at the time of the last payment to the
42 employee, at the employer's option.

43 (c) Any employer ~~or payor~~, *payer, person or organization deducting*

1 *and withholding tax who willfully intentionally* fails to furnish a statement
2 to an employee or payee as required under the provisions of subsections
3 (a) and (b) ~~of this section~~ shall be guilty of a *nonperson* misdemeanor and
4 upon conviction thereof shall be punished by a fine not exceeding \$100
5 for each such offense.

6 (d) The annual statement of wages and salaries paid and amount with-
7 held required by this section shall be in lieu of the annual information
8 return required under K.S.A. 79-3222 *and amendments thereto*.

9 Sec. 4. K.S.A. 2002 Supp. 79-32,100 is hereby amended to read as
10 follows: 79-32,100. (a) The tax deducted and withheld under this act shall
11 not be allowed as a deduction ~~either to the employer or payor, payer,~~
12 *person or organization deducting and withholding tax* or to the employee
13 or payee in computing taxable income under the “Kansas income tax act.”

14 (b) The full amount of wages and salaries or payments other than
15 wages from which an amount was withheld in accordance with this act
16 shall be included in the gross income of the employee or payee unless
17 such wages and salaries or payments other than wages or a portion thereof
18 are otherwise excludable under the provisions of the “Kansas income tax
19 act.”

20 (c) The amount deducted and withheld under this act during any
21 calendar year from the wages or payments other than wages of an indi-
22 vidual taxpayer shall be allowed as a credit against the income tax oth-
23 erwise imposed on such taxpayer by the “Kansas income tax act,” whether
24 or not such amount was remitted to the division of taxation by the em-
25 ployer ~~or payor, payer, person or organization deducting and withholding~~
26 *tax* in accordance with the terms of this act.

27 (d) If the amount withheld under this act during any calendar year
28 exceeds the individual income tax liability of the employee-payee-taxpayer
29 any excess shall be applied to any other income tax owed the state of
30 Kansas by such individual ~~(including fines, penalties and interest, if any),~~
31 and the balance of such excess, if any, refunded to the taxpayer as pro-
32 vided in subsection (c) of K.S.A. 79-32,105, and amendments thereto.

33 Sec. 5. K.S.A. 2002 Supp. 79-32,100a is hereby amended to read as
34 follows: 79-32,100a. (a) Every ~~payor payer~~ *payer* who is required under federal
35 law to withhold upon payments other than wages ~~pursuant to the federal~~
36 ~~internal revenue code as defined by K.S.A. 79-3295 and amendments~~
37 ~~thereto, shall withhold and deduct and withhold~~ an amount to be deter-
38 mined in accordance with K.S.A. 79-32,100d, and amendments thereto;
39 ~~whenever the payee is a person whose primary residence is in Kansas.~~

40 (b) A determination by the internal revenue service that relieves a
41 ~~payor payer~~ *payer* from withholding responsibility with respect to payments
42 other than wages to a payee shall also apply for Kansas income tax with-
43 holding purposes. Whenever a ~~payor payer~~ *payer* is required to reinstate with-

1 holding for federal income tax with regard to any payee, such obligation
2 shall be equally applicable for Kansas withholding purposes.

3 ~~(c) Every payor who makes a distribution as defined by subsection~~
4 ~~(d) of K.S.A. 79-3295, and amendments thereto, shall withhold and de-~~
5 ~~duct an amount to be determined in accordance with K.S.A. 79-32,100d,~~
6 ~~and amendments thereto, from amounts distributed or distributable to~~
7 ~~each nonresident shareholder or partner. Every payer who is required~~
8 ~~under federal law to withhold upon payments of a pension, annuity or~~
9 ~~other deferred income, as defined by K.S.A. 79-3295 and amendments~~
10 ~~thereto, shall deduct and withhold an amount to be determined in ac-~~
11 ~~cordance with K.S.A. 79-32,100d and amendments thereto, whenever the~~
12 ~~payee is a resident of the state of Kansas.~~

13 *(d) Every payer who makes a payment of a management fee or a*
14 *consulting fee to a nonresident shall deduct and withhold an amount to*
15 *be determined in accordance with K.S.A. 2002 Supp. 79-32,100d and*
16 *amendments thereto.*

17 New Sec. 6. (a) Corporations for which an election as an S corpo-
18 ration under subchapter S of the federal internal revenue code is in effect
19 are required to deduct and withhold tax at a rate equal to the maximum
20 rate imposed on individuals pursuant to subsection (a) of K.S.A. 79-32,110
21 and amendments thereto, from a nonresident shareholder's share of Kan-
22 sas taxable income of the corporation, whether distributed or undistri-
23 buted, and pay the withheld amount to the department in the manner
24 prescribed by the department. For a taxable year beginning after 2002,
25 the corporation shall make a return and pay over the withhold funds on
26 or before the due date of the S corporation's income tax return, including
27 extensions. Taxes withheld in the name of the nonresident shareholder
28 must be used as credit against taxes due at the time the nonresident files
29 a return of income or other applicable information return for the taxable
30 year.

31 (b) An S corporation required to withhold taxes on distributed or
32 undistributed income shall file a return with each payment of tax to the
33 department, on forms prescribed by the secretary, disclosing such infor-
34 mation as required by the secretary pursuant to subsection (i). The S
35 corporation shall furnish to each nonresident shareholder a written state-
36 ment as required by K.S.A. 79-3299 and amendments thereto as proof of
37 the amount of the nonresident shareholder's share of distributed or un-
38 distributed income and of the amount that has been withheld.

39 (c) Partnerships are required to withhold tax at a rate equal to the
40 maximum rate imposed on individuals pursuant to subsection (a) of K.S.A.
41 79-32,110 and amendments thereto, from a nonresident partner's share
42 of Kansas taxable income of the partnership, whether distributed or un-
43 distributed, and pay the withheld amount to the department in the man-

1 ner prescribed by the department. For a taxable year beginning after
2 2002, the partnership shall make a return and pay over the withheld funds
3 on or before the due date of the partnership's income tax return, including
4 extensions. Taxes withheld in the name of the nonresident partner must
5 be used as credit against taxes due at the time the nonresident files a
6 return of tax or other applicable information return for the taxable year.

7 (d) A partnership required to withhold taxes on distributed or undis-
8 tributed income shall file a return with each payment of tax to the de-
9 partment, on forms prescribed by the secretary, disclosing such infor-
10 mation as required by the secretary pursuant to subsection (i). The
11 partnership shall furnish to each nonresident shareholder a written state-
12 ment as required by K.S.A. 79-3299 and amendments thereto, as proof
13 of the amount of the nonresident shareholder's share of distributed or
14 undistributed income that has been withheld.

15 (e) Limited liability companies are required to withhold tax at a rate
16 equal to the maximum rate imposed on individuals pursuant to subsection
17 (a) of K.S.A. 79-32,110 and amendments thereto, from a nonresident
18 member's share of Kansas taxable income of the limited liability company,
19 whether distributed or undistributed, and pay the withheld amount to the
20 department in the manner prescribed by the department. For a taxable
21 year beginning after 2002, the limited liability company shall make a re-
22 turn and pay over the withheld funds on or before the due date of the
23 limited liabilities income tax return, including extensions. Taxes withheld
24 in the name of the nonresident member must be used as credit against
25 taxes due at the time the nonresident files a return of tax or other appli-
26 cable information return for the taxable year.

27 (f) A limited liability company required to withhold taxes on distrib-
28 uted or undistributed income shall file a return with each payment of tax
29 to the department, on forms prescribed by the secretary, disclosing such
30 information as required by the secretary pursuant to subsection (i). The
31 limited liability company shall furnish to each nonresident member a writ-
32 ten statement as required by K.S.A. 79-3299 and amendments thereto,
33 as proof of the amount of the nonresident member's share of distributed
34 or undistributed income that has been withheld.

35 (g) If a nonresident shareholder, partner or member provides the S
36 corporation, partnership or limited liability company with a statement that
37 the shareholder or partner is an organization exempt from income taxes
38 under section 501(a) of the federal internal revenue code, then the S
39 corporation, partnership or limited liability company is not required to
40 withhold with regard to that shareholder, partner or member. The state-
41 ment must contain the shareholder's, partner's or member's name, fed-
42 eral identification number, internal revenue code section exemption num-
43 ber, and a copy of the internal revenue service exemption letter.

1 (h) (1) For purposes of computing the penalty under K.S.A. 79-
2 32,107 and amendments thereto, the amount withheld is deemed a pay-
3 ment of estimated tax, and an equal part of the amount is deemed paid
4 on each estimated tax due date for the previous taxable year.

5 (2) If a nonresident shareholder, partner or member files an affidavit
6 with the department in a form acceptable to the department by which
7 such nonresident shareholder, partner or member agrees to be subject
8 to the personal jurisdiction of the department in courts of this state for
9 the purpose of determining and collecting any Kansas taxes, including
10 estimated taxes, together with any related interest and penalties, then the
11 S corporation, partnership or limited liability company is not required to
12 withhold with regard to that shareholder, partner or member. The de-
13 partment may revoke an exemption granted by this subsection at any time
14 it determines that the nonresident shareholder, partner or member is not
15 abiding by its terms.

16 (i) The department is authorized to require such returns and other
17 information as it considers appropriate to administer the provisions of this
18 section, and to issue rulings and promulgate regulations as necessary or
19 appropriate to implement this section.

20 (j) The director of taxation may allow a nonresident individual share-
21 holder, partner or member to not file a Kansas income tax return if the
22 nonresident individual shareholder's, partner's or member's only source
23 of Kansas income was such nonresident shareholder's, partner's or mem-
24 ber's share of the S corporation's, partnership's or limited liability com-
25 pany's income which was derived from or attributable to sources within
26 this state, and the S corporation, partnership or limited liability company
27 has remitted the amount required by subsections (a), (c) or (e) on behalf
28 of such nonresident shareholder, partner or member. The amount re-
29 mitted shall be retained in satisfaction of the Kansas income tax liability
30 of the nonresident individual shareholder, partner or member.

31 (k) The provisions of this section shall be part of and supplemental
32 to the Kansas withholding and declaration of estimated tax act.

33 Sec. 7. K.S.A. 2002 Supp. 79-32,100b is hereby amended to read as
34 follows: 79-32,100b. (a) Every employer ~~or payor, payer, person or or-~~
35 ~~ganization~~ required to deduct and withhold tax from wages of an em-
36 ployee ~~or~~, payments other than wages of a payee ~~or from a distribution~~,
37 under this act shall be liable for the payment of such tax whether or not
38 it is collected from the employee ~~or~~, payee ~~or distributee~~ by the employer
39 ~~or payor, payer, person or organization~~. For purposes of assessment and
40 collection, any amount required to be withheld and paid over to the de-
41 partment of revenue, and any additions to tax, penalties and interest with
42 respect thereto, shall be considered the tax of the employer.

43 (b) Any amount of tax withheld shall constitute a special fund in trust

1 for the department of revenue.

2 (c) No employee ~~or~~, payee *or distributee* shall have any right of action
3 against their employer ~~or payor~~, *payer, person or organization deducting*
4 *and withholding tax* in respect to any moneys deducted and withheld
5 from wages ~~or~~, payments other than wages *or distributions* and paid over
6 to the department of revenue in compliance or in intended compliance
7 with this act.

8 Sec. 8. K.S.A. 2002 Supp. 79-32,100c is hereby amended to read as
9 follows: 79-32,100c. (a) If an employer ~~or payor~~, *payer, person or organ-*
10 *ization deducting and withholding tax* fails to deduct and withhold the
11 tax as required under this act, and thereafter, the income tax against which
12 the tax may be credited is paid, the tax required to be deducted and
13 withheld shall not be collected from the employer ~~or payor~~, *payer, person*
14 *or organization*. The payment of such tax does not, however, operate to
15 relieve the employer, *payer, person or organization* from liability for pen-
16 alties, interest or additions to the tax applicable with respect to such fail-
17 ure to deduct and withhold. The employer ~~or payor will~~, *payer, person*
18 *or organization shall* not be relieved under this provision from liability
19 for payment of the tax required to be withheld unless it can be shown
20 that the income tax against which the tax required to be withheld under
21 this act may be credited has been paid.

22 (b) Every agent or other person having control, receipt, custody or
23 disposal of, or paying the wages of an employee or group of employees
24 employed by one or more employers, is for the purpose of this act des-
25 ignated to be an employer. In the case of the corporation, the officers
26 and board of directors are likewise considered employers. Employers of
27 classes named in this section shall be subject to all the provisions of law
28 including penalties as is their principal. Any employer who willfully fails
29 to collect the tax imposed by the Kansas withholding tax act or truthfully
30 account for any pay over such tax, or willfully attempts in any manner to
31 evade or defeat any tax or the payment thereof, shall be subject to a
32 penalty equal to the total amount of the tax evaded, or not collected, or
33 not accounted for and paid over in addition to other penalties provided
34 by law.

35 Sec. 9. K.S.A. 2002 Supp. 79-3295, 79-3298, 79-3299, 79-32,100, 79-
36 32,100a, 79-32,100b and 79-32,100c are hereby repealed.

37 Sec. 10. This act shall take effect and be in force from and after its
38 publication in the statute book.

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