

## HOUSE BILL No. 2028

By Special Committee on Assessment and Taxation

1-4

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9 AN ACT concerning franchise tax; relating to apportionment method-  
10 ology; amending K.S.A. 2004 Supp. 79-5401 and repealing the existing  
11 section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

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

22 (2) For any foreign or domestic limited liability company, foreign or  
23 domestic limited partnership or foreign or domestic limited liability part-  
24 nership duly registered and authorized to do business in Kansas by the  
25 secretary of state and which has net capital accounts located or used in  
26 this state at the end of the preceding taxable year as required to be re-  
27 ported on the federal partnership return of income of \$100,000 or more,  
28 such entity shall pay an annual franchise tax to the secretary of revenue  
29 at the rate of .125% of the net capital accounts located in or used in this  
30 state at the end of the preceding taxable year as required to be reported  
31 on the federal partnership return of income, or for a one-member LLC  
32 taxed as a sole proprietorship which has net book value of the LLC as  
33 calculated on an income tax basis located in or used in this state at the  
34 end of the preceding taxable year of \$100,000 or more, .125% of net book  
35 value of the LLC as calculated on an income tax basis located in or used  
36 in this state at the end of the preceding taxable year, except that such  
37 annual franchise tax for any such entity shall not exceed \$20,000.

38 (3) For any business trust duly registered and authorized to do busi-  
39 ness in Kansas by the secretary of state which has corpus as shown on its  
40 balance sheet at the end of the preceding taxable year as required to be  
41 reported to the secretary of revenue of \$100,000 or more, such entity  
42 shall pay an annual franchise tax to the secretary of revenue at the rate  
43 of .125% of the corpus as shown on its balance sheet at the end of the

1 preceding taxable year as required to be reported to the secretary of  
2 revenue or in the case of a foreign business trust which has a corpus  
3 which is located in or which it uses or intends to use in this state as shown  
4 on its balance sheet at the end of the preceding taxable year as required  
5 to be reported to the secretary of revenue of \$100,000 or more, .125%  
6 of that portion of the corpus which is located in or which it uses or intends  
7 to use in this state as shown on its balance sheet at the end of the pre-  
8 ceding taxable year as required to be reported to the secretary of revenue,  
9 except that the annual franchise tax for any such entity shall not exceed  
10 \$20,000. Such balance sheet shall be as of the end of the tax period,  
11 certified by the trustee, fairly and truly reflecting the trust assets and  
12 liabilities and specifically setting out its corpus, and, in the case of a for-  
13 eign business trust, fairly and truly reflecting an allocation of its moneys  
14 and other assets as between those located, used or to be used, in this  
15 state and those located, used or to be used elsewhere.

16 (b) (1) Every corporation or association, business trust, limited li-  
17 ability company, limited partnership or limited liability partnership subject  
18 to taxation under this act, regardless of whether such entity has a franchise  
19 tax liability, shall make a return, stating specifically such information as  
20 may be required by the forms, rules and regulations of the secretary of  
21 revenue, which return shall include a balance sheet listing all assets and  
22 liabilities as of the end of the tax year, as reported in the federal income  
23 tax return on form 1120 or, if no such federal return is required to be  
24 filed, such balance sheet information as otherwise required by the sec-  
25 retary, and such further information showing the allocation or apportion-  
26 ment calculations in computing the amount of the franchise tax. The  
27 return of a corporation or association shall be signed by the president,  
28 vice-president, treasurer, assistant treasurer, chief accounting officer or  
29 any other officer so authorized to act. The fact that an individual's name  
30 is signed on a return shall be *prima facie* evidence that such individual is  
31 authorized to sign such return on behalf of such corporation. In cases  
32 where receivers, trustees in bankruptcy or assignees are operating the  
33 property or business of corporations, such receivers, trustees, or assignees  
34 shall make returns for such corporations in the same manner and form  
35 as corporations are required to make returns. Any tax due on the basis of  
36 such returns shall be collected in the same manner as if collected from  
37 the corporation for which the return is made. The returns of a limited  
38 liability partnership shall be signed by a partner of the limited liability  
39 partnership. The returns of a limited liability company shall be signed by  
40 a member of the limited liability company.

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

1 (3) The director of taxation may grant a reasonable extension of time  
2 for filing returns in accordance with rules and regulations of the secretary  
3 of revenue. Whenever any such extension of time to file is requested by  
4 a taxpayer and granted by the director, no penalty authorized by K.S.A.  
5 79-3228, and amendments thereto, shall be imposed if 90% of the liability  
6 is paid on or before the original due date.

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

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

18 (d) The provisions of K.S.A. 79-3226, 79-3228, 79-3228a, 79-3229,  
19 79-3230, 79-3233, 79-3233a, 79-3233b, 79-3233g, 79-3233h, 79-3233i,  
20 79-3234, 79-3235 and 79-3236, and amendments thereto, shall apply to  
21 the administration and enforcement of this section.

22 (e) All taxes paid pursuant to the provisions of this act shall be  
23 rounded off to the nearest \$1, and unless other disposition is specifically  
24 provided by law, the taxes collected under the provisions of this act and  
25 all overpayments which may not be refunded under this section shall be  
26 remitted to the state treasurer in accordance with the provisions of K.S.A.  
27 75-4215, and amendments thereto. Upon receipt of each such remittance,  
28 the state treasurer shall deposit the entire amount in the state treasury  
29 to the credit of the state general fund. The secretary of revenue shall not  
30 refund any overpayment of franchise taxes which is equal to \$5 or less,  
31 shall not credit any domestic corporation or foreign corporation, associ-  
32 ation, business trust, limited liability company, limited partnership or lim-  
33 ited liability partnership with any amount which may not be refunded  
34 under this section, and shall not require reimbursement for any under-  
35 payment of franchise taxes which is less than \$5. Franchise tax refunds  
36 shall be paid to the claimant from the income tax refund fund upon war-  
37 rants of the director of accounts and reports pursuant to vouchers ap-  
38 proved by the director of taxation, but no warrant issued hereunder shall  
39 be drawn in an amount less than \$5. No interest shall be allowed on any  
40 payment made to a claimant pursuant to this act.

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

43 (2) "net book value as calculated on an income tax basis located in or

1 used in this state” means the net book value of a limited liability company  
2 multiplied by a percentage which is the average of the following three  
3 percentages: (A) The average value of the limited liability company’s real  
4 and tangible personal property owned or rented and used in this state  
5 during the next preceding tax period divided by the average total value  
6 of the limited liability company’s real and tangible personal property  
7 owned or rented and used during the next preceding tax period; (B) the  
8 total amount of compensation paid by the limited liability company in this  
9 state during the next preceding tax period divided by the total amount of  
10 compensation paid everywhere by the limited liability company during  
11 the next preceding tax period; and (C) the total sales of the limited liability  
12 company in this state during the next preceding tax period divided by the  
13 total sales of the limited liability company everywhere during the next  
14 preceding tax period. If a limited liability company has no ~~real and tan-~~  
15 ~~gible property owned or rented and used, compensation paid or sales~~  
16 ~~made for the preceding tax period, then the average percentage shall be~~  
17 ~~determined by using only those percentages for property, compensation~~  
18 ~~and sales which reflect property or activity~~ *property or activity mentioned*  
19 *in one of the above factors, the appropriate percentage for that factor is*  
20 *100%;*

21 (3) “net capital accounts located in or used in this state” means the  
22 net capital accounts of a limited partnership or limited liability partner-  
23 ship as stated on the federal income tax return multiplied by a percentage  
24 which is the average of the following three percentages: (A) The average  
25 value of such entity’s real and tangible personal property owned or rented  
26 and used in this state during the next preceding tax period divided by the  
27 average total value of such entity’s real and tangible personal property  
28 owned or rented and used during the next preceding tax period; (B) the  
29 total amount of compensation paid by such entity in this state during the  
30 next preceding tax period divided by the total amount of compensation  
31 paid everywhere by such entity during the next preceding tax period; and  
32 (C) the total sales of such entity in this state during the next preceding  
33 tax period divided by the total sales of such entity everywhere during the  
34 next preceding tax period. If such entity has no ~~real and tangible personal~~  
35 ~~property owned or rented and used, compensation paid or sales made for~~  
36 ~~the preceding tax period, then the average percentage shall be deter-~~  
37 ~~mined by using only those percentages for property, compensation and~~  
38 ~~sales which reflect property or activity~~ *property or activity mentioned in*  
39 *one of the above factors, the appropriate percentage for that factor is*  
40 *100%;*

41 (4) “shareholder’s equity” means the sum of: (1) Paid-in capital stock,  
42 except that paid-in capital stock shall not include any capital stock issued  
43 by a corporation and reacquired by such corporation through gift, pur-

1 chase or otherwise and available for resale or retirement; (2) capital paid  
2 in, in excess of par; and (3) retained earnings, all as stated on such cor-  
3 poration's federal income tax return;

4 (5) "shareholder's equity attributable to Kansas" means the share-  
5 holder's equity of a corporation multiplied by a percentage which is the  
6 average of the following three percentages: (A) The average value of the  
7 corporation's real and tangible personal property owned or rented and  
8 used in this state during the next preceding tax period divided by the  
9 average total value of the corporation's real and tangible personal property  
10 owned or rented and used during the next preceding tax period; (B) the  
11 total amount of compensation paid by the corporation in this state during  
12 the next preceding tax period divided by the total amount of compensa-  
13 tion paid everywhere by the corporation during the next preceding tax  
14 period; and (C) the total sales of the corporation in this state during the  
15 next preceding tax period divided by the total sales of the corporation  
16 everywhere during the next preceding tax period. If a corporation has no  
17 ~~real and tangible personal property owned or rented and used, compen-~~  
18 ~~sation paid or sales made for the preceding tax period, then the average~~  
19 ~~percentage shall be determined by using only those percentages for prop-~~  
20 ~~erty, compensation and sales which reflect property or activity~~ *property*  
21 *or activity mentioned in one of the above factors, the appropriate per-*  
22 *centage for that factor is 100%; and*

23 (6) "taxable equity attributable to Kansas" means shareholder's equity  
24 attributable to Kansas.

25 (g) The provisions of this section shall apply to all tax years com-  
26 mencing after December 31, ~~2003~~ 2004.

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

29 Sec. 2. K.S.A. 2004 Supp. 79-5401 is hereby repealed.

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