

HOUSE BILL No. 2548

By Representatives Oharah, Beamer, Brown, Carlson, Decker, Grange, Huy, Kelley, Kelsey, Kiegerl, Kilpatrick, Kinzer, Mast, McCreary, Merrick, Judy Morrison, Olson, Otto, Peck, Pilcher-Cook and Siegfried

12-9

12 AN ACT concerning taxation; relating to the franchise tax; rates; elimi-
13 nation; amending K.S.A. 2005 Supp. 79-5401 and repealing the exist-
14 ing section.
15

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

17 Section 1. K.S.A. 2005 Supp. 79-5401 is hereby amended to read as
18 follows: 79-5401. (a) (1) *Subject to the limitations provided in subsection*
19 *(g), for any foreign or domestic for profit corporation, or professional*
20 *corporation or association, duly registered and authorized to do business*
21 *in Kansas by the secretary of state and which has taxable equity attrib-*
22 *utable to Kansas of \$100,000 or more, such entity shall pay an annual*
23 *franchise tax to the secretary of revenue for the tax year commencing*
24 *after December 31, 2004, at the rate of .125%, for the tax year com-*
25 *mencing after December 31, 2005, at the rate of .125%, for the tax year*
26 *commencing after December 31, 2006, at the rate of .083%, and for the*
27 *tax commencing after December 31, 2007, at the rate of .041%, of such*
28 *entity's taxable equity attributable to Kansas, except that such annual fran-*
29 *chise tax for any such entity shall not exceed \$20,000.*

30 (2) *Subject to the limitations provided in subsection (g), for any for-*
31 *ign or domestic limited liability company, foreign or domestic limited*
32 *partnership or foreign or domestic limited liability partnership duly reg-*
33 *istered and authorized to do business in Kansas by the secretary of state*
34 *and which has net capital accounts located in or used in this state at the*
35 *end of the taxable year as required to be reported on the federal part-*
36 *nership return of income of \$100,000 or more, such entity shall pay an*
37 *annual franchise tax to the secretary of revenue for the tax year com-*
38 *mencing after December 31, 2004, at the rate of .125%, for the tax year*
39 *commencing after December 31, 2005, at the rate of .125%, for the tax*
40 *year commencing after December 31, 2006, at the rate of .083%, and for*
41 *the tax year commencing after December 31, 2007, at the rate of .041%,*
42 *of the net capital accounts located in or used in this state at the end of*
43 *the taxable year as required to be reported on the federal partnership*

1 return of income, or for a one-member LLC taxed as a sole proprietorship
2 which has net book value of the LLC as calculated on an income tax basis
3 located in or used in this state at the end of the taxable year of \$100,000
4 or more, *for the tax year commencing after December 31, 2004, at the*
5 *rate of .125%, for the tax year commencing after December 31, 2005, at*
6 *the rate of .125%, for the tax year commencing after December 31, 2006,*
7 *at the rate of .083%, and for the tax year commencing after December*
8 *31, 2007, at the rate of .041%*, of net book value of the LLC as calculated
9 on an income tax basis located in or used in this state at the end of the
10 taxable year, except that such annual franchise tax for any such entity shall
11 not exceed \$20,000.

12 (3) *Subject to the limitations provided in subsection (g), for any busi-*
13 *ness trust duly registered and authorized to do business in Kansas by the*
14 *secretary of state and which has corpus as shown on its balance sheet at*
15 *the end of the taxable year as required to be reported to the secretary of*
16 *revenue of \$100,000 or more, such entity shall pay an annual franchise*
17 *tax to the secretary of revenue for the tax year commencing after Decem-*
18 *ber 31, 2004, at the rate of .125%, for the tax year commencing after*
19 *December 31, 2005, at the rate of .125%, for the tax year commencing*
20 *after December 31, 2006, at the rate of .083%, and for the tax year com-*
21 *mencing after December 31, 2007, at the rate of .041%*, of the corpus as
22 shown on its balance sheet at the end of the taxable year as required to
23 be reported to the secretary of revenue or in the case of a foreign business
24 trust which has a corpus which is located in or which it uses or intends
25 to use in this state as shown on its balance sheet at the end of the taxable
26 year as required to be reported to the secretary of revenue of \$100,000
27 or more, *for the tax year commencing after December 31, 2004, at the*
28 *rate of .125%, for the tax year commencing after December 31, 2005, at*
29 *the rate of .125%, for the tax year commencing after December 31, 2006,*
30 *at the rate of .083%, and for the tax year commencing after December*
31 *31, 2007, at the rate of .041%*, of that portion of the corpus which is
32 located in or which it uses or intends to use in this state as shown on its
33 balance sheet at the end of the taxable year as required to be reported
34 to the secretary of revenue, except that the annual franchise tax for any
35 such entity shall not exceed \$20,000. Such balance sheet shall be as of
36 the end of the tax period, certified by the trustee, fairly and truly reflecting
37 the trust assets and liabilities and specifically setting out its corpus, and,
38 in the case of a foreign business trust, fairly and truly reflecting an allo-
39 cation of its moneys and other assets as between those located, used or
40 to be used, in this state and those located, used or to be used elsewhere.

41 (b) (1) Every corporation or association, business trust, limited lia-
42 bility company, limited partnership or limited liability partnership subject
43 to taxation under this act, regardless of whether such entity has a franchise

1 tax liability, shall make a return, stating specifically such information as
2 may be required by the forms, rules and regulations of the secretary of
3 revenue, which return shall include a balance sheet listing all assets and
4 liabilities as of the end of the tax year, as reported in the federal income
5 tax return on form 1120 or, if no such federal return is required to be
6 filed, such balance sheet information as otherwise required by the sec-
7 retary, and such further information showing the allocation or apportion-
8 ment calculations in computing the amount of the franchise tax. The
9 return of a corporation or association shall be signed by the president,
10 vice-president, treasurer, assistant treasurer, chief accounting officer or
11 any other officer so authorized to act. The fact that an individual's name
12 is signed on a return shall be *prima facie* evidence that such individual is
13 authorized to sign such return on behalf of such corporation. In cases
14 where receivers, trustees in bankruptcy or assignees are operating the
15 property or business of corporations, such receivers, trustees, or assignees
16 shall make returns for such corporations in the same manner and form
17 as corporations are required to make returns. Any tax due on the basis of
18 such returns shall be collected in the same manner as if collected from
19 the corporation for which the return is made. The returns of a limited
20 liability partnership shall be signed by a partner of the limited liability
21 partnership. The returns of a limited liability company shall be signed by
22 a member of the limited liability company.

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

26 (3) The director of taxation may grant a reasonable extension of time
27 for filing returns in accordance with rules and regulations of the secretary
28 of revenue. Whenever any such extension of time to file is requested by
29 a taxpayer and granted by the director, no penalty authorized by K.S.A.
30 79-3228, and amendments thereto, shall be imposed if 90% of the liability
31 is paid on or before the original due date.

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

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

43 (d) The provisions of K.S.A. 79-3226, 79-3228, 79-3228a, 79-3229,

1 79-3230, 79-3233, 79-3233a, 79-3233b, 79-3233g, 79-3233h, 79-3233i,
2 79-3234, 79-3235 and 79-3236, and amendments thereto, shall apply to
3 the administration and enforcement of this section.

4 (e) All taxes paid pursuant to the provisions of this act shall be
5 rounded off to the nearest \$1, and unless other disposition is specifically
6 provided by law, the taxes collected under the provisions of this act and
7 all overpayments which may not be refunded under this section shall be
8 remitted to the state treasurer in accordance with the provisions of K.S.A.
9 75-4215, and amendments thereto. Upon receipt of each such remittance,
10 the state treasurer shall deposit the entire amount in the state treasury
11 to the credit of the state general fund. The secretary of revenue shall not
12 refund any overpayment of franchise taxes which is equal to \$5 or less,
13 shall not credit any domestic corporation or foreign corporation, associ-
14 ation, business trust, limited liability company, limited partnership or lim-
15 ited liability partnership with any amount which may not be refunded
16 under this section, and shall not require reimbursement for any under-
17 payment of franchise taxes which is less than \$5. Franchise tax refunds
18 shall be paid to the claimant from the income tax refund fund upon war-
19 rants of the director of accounts and reports pursuant to vouchers ap-
20 proved by the director of taxation, but no warrant issued hereunder shall
21 be drawn in an amount less than \$5. No interest shall be allowed on any
22 payment made to a claimant pursuant to this act.

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

25 (2) "net book value as calculated on an income tax basis located in or
26 used in this state" means the net book value of a limited liability company
27 multiplied by a percentage which is the average of the following three
28 percentages: (A) The average value of the limited liability company's real
29 and tangible personal property owned or rented and used in this state
30 during the tax period divided by the average total value of the limited
31 liability company's real and tangible personal property owned or rented
32 and used during the tax period; (B) the total amount of compensation
33 paid by the limited liability company in this state during the tax period
34 divided by the total amount of compensation paid everywhere by the
35 limited liability company during the tax period; and (C) the total sales of
36 the limited liability company in this state during the tax period divided
37 by the total sales of the limited liability company everywhere during the
38 tax period. If a limited liability company has no real and tangible property
39 owned or rented and used, compensation paid or sales made for the tax
40 period, then the average percentage shall be determined by using only
41 those percentages for property, compensation and sales which reflect
42 property or activity;

43 (3) "net capital accounts located in or used in this state" means the

1 net capital accounts of a limited partnership or limited liability partner-
2 ship as stated on the federal income tax return multiplied by a percentage
3 which is the average of the following three percentages: (A) The average
4 value of such entity's real and tangible personal property owned or rented
5 and used in this state during the tax period divided by the average total
6 value of such entity's real and tangible personal property owned or rented
7 and used during the tax period; (B) the total amount of compensation
8 paid by such entity in this state during the tax period divided by the total
9 amount of compensation paid everywhere by such entity during the tax
10 period; and (C) the total sales of such entity in this state during the tax
11 period divided by the total sales of such entity everywhere during the tax
12 period. If such entity has no real and tangible personal property owned
13 or rented and used, compensation paid or sales made for the tax period,
14 then the average percentage shall be determined by using only those
15 percentages for property, compensation and sales which reflect property
16 or activity;

17 (4) "shareholder's equity" means the sum of: (1) Paid-in capital stock,
18 except that paid-in capital stock shall not include any capital stock issued
19 by a corporation and reacquired by such corporation through gift, pur-
20 chase or otherwise and available for resale or retirement; (2) capital paid
21 in, in excess of par; and (3) retained earnings, all as stated on such cor-
22 poration's federal income tax return;

23 (5) "shareholder's equity attributable to Kansas" means the share-
24 holder's equity of a corporation multiplied by a percentage which is the
25 average of the following three percentages: (A) The average value of the
26 corporation's real and tangible personal property owned or rented and
27 used in this state during the tax period divided by the average total value
28 of the corporation's real and tangible personal property owned or rented
29 and used during the tax period; (B) the total amount of compensation
30 paid by the corporation in this state during the tax period divided by the
31 total amount of compensation paid everywhere by the corporation during
32 the tax period; and (C) the total sales of the corporation in this state during
33 the tax period divided by the total sales of the corporation everywhere
34 during the tax period. If a corporation has no real and tangible personal
35 property owned or rented and used, compensation paid or sales made for
36 the tax period, then the average percentage shall be determined by using
37 only those percentages for property, compensation and sales which reflect
38 property or activity; and

39 (6) "taxable equity attributable to Kansas" means shareholder's equity
40 attributable to Kansas.

41 (g) The provisions of this section shall apply to ~~all tax years~~ *the tax*
42 *year commencing after December 31, 2003, to the tax year commencing*
43 *after December 31, 2004, to the tax year commencing after December 31,*

1 2005, to the tax year commencing after December 31, 2006, and to the
2 tax year commencing after December 31, 2007, but shall not apply to any
3 tax year commencing after December 31, 2008.

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

6 Sec. 2. K.S.A. 2005 Supp. 79-5401 is hereby repealed.

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