

## HOUSE BILL No. 2768

By Committee on Taxation

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9 AN ACT concerning income taxation; relating to capital gains; amending  
10 K.S.A. 79-32,138 and K.S.A. 2005 Supp. 79-32,117 and repealing the  
11 existing sections.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 79-32,117 is hereby amended to read  
15 as follows: 79-32,117. (a) The Kansas adjusted gross income of an indi-  
16 vidual means such individual's federal adjusted gross income for the tax-  
17 able year, with the modifications specified in this section.

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

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

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

37 (iii) The federal net operating loss deduction.

38 (iv) Federal income tax refunds received by the taxpayer if the de-  
39 duction of the taxes being refunded resulted in a tax benefit for Kansas  
40 income tax purposes during a prior taxable year. Such refunds shall be  
41 included in income in the year actually received regardless of the method  
42 of accounting used by the taxpayer. For purposes hereof, a tax benefit  
43 shall be deemed to have resulted if the amount of the tax had been de-

1 ducted in determining income subject to a Kansas income tax for a prior  
2 year regardless of the rate of taxation applied in such prior year to the  
3 Kansas taxable income, but only that portion of the refund shall be in-  
4 cluded as bears the same proportion to the total refund received as the  
5 federal taxes deducted in the year to which such refund is attributable  
6 bears to the total federal income taxes paid for such year. For purposes  
7 of the foregoing sentence, federal taxes shall be considered to have been  
8 deducted only to the extent such deduction does not reduce Kansas tax-  
9 able income below zero.

10 (v) The amount of any depreciation deduction or business expense  
11 deduction claimed on the taxpayer's federal income tax return for any  
12 capital expenditure in making any building or facility accessible to the  
13 handicapped, for which expenditure the taxpayer claimed the credit al-  
14 lowed by K.S.A. 79-32,177, and amendments thereto.

15 (vi) Any amount of designated employee contributions picked up by  
16 an employer pursuant to K.S.A. 12-5005, 20-2603, 74-4919 and 74-4965,  
17 and amendments to such sections.

18 (vii) The amount of any charitable contribution made to the extent  
19 the same is claimed as the basis for the credit allowed pursuant to K.S.A.  
20 79-32,196, and amendments thereto.

21 (viii) The amount of any costs incurred for improvements to a swine  
22 facility, claimed for deduction in determining federal adjusted gross in-  
23 come, to the extent the same is claimed as the basis for any credit allowed  
24 pursuant to K.S.A. 2005 Supp. 79-32,204 and amendments thereto.

25 (ix) The amount of any ad valorem taxes and assessments paid and  
26 the amount of any costs incurred for habitat management or construction  
27 and maintenance of improvements on real property, claimed for deduc-  
28 tion in determining federal adjusted gross income, to the extent the same  
29 is claimed as the basis for any credit allowed pursuant to K.S.A. 79-32,203  
30 and amendments thereto.

31 (x) Amounts received as nonqualified withdrawals, as defined by  
32 K.S.A. 2005 Supp. 75-643, and amendments thereto, if, at the time of  
33 contribution to a family postsecondary education savings account, such  
34 amounts were subtracted from the federal adjusted gross income pur-  
35 suant to paragraph (xv) of subsection (c) of K.S.A. 79-32,117, and  
36 amendments thereto, or if such amounts are not already included in the  
37 federal adjusted gross income.

38 (xi) The amount of any contribution made to the same extent the  
39 same is claimed as the basis for the credit allowed pursuant to K.S.A.  
40 2005 Supp. 74-50,154, and amendments thereto.

41 (xii) For taxable years commencing after December 31, 2004,  
42 amounts received as withdrawals not in accordance with the provisions  
43 of K.S.A. 2005 Supp. 74-50,204, and amendments thereto, if, at the time

1 of contribution to an individual development account, such amounts were  
2 subtracted from the federal adjusted gross income pursuant to paragraph  
3 (xiii) of subsection (c), or if such amounts are not already included in the  
4 federal adjusted gross income.

5 (c) There shall be subtracted from federal adjusted gross income:

6 (i) Interest or dividend income on obligations or securities of any  
7 authority, commission or instrumentality of the United States and its pos-  
8 sessions less any related expenses directly incurred in the purchase of  
9 such obligations or securities, to the extent included in federal adjusted  
10 gross income but exempt from state income taxes under the laws of the  
11 United States.

12 (ii) Any amounts received which are included in federal adjusted  
13 gross income but which are specifically exempt from Kansas income tax-  
14 ation under the laws of the state of Kansas.

15 (iii) The portion of any gain or loss from the sale or other disposition  
16 of property having a higher adjusted basis for Kansas income tax purposes  
17 than for federal income tax purposes on the date such property was sold  
18 or disposed of in a transaction in which gain or loss was recognized for  
19 purposes of federal income tax that does not exceed such difference in  
20 basis, but if a gain is considered a long-term capital gain for federal in-  
21 come tax purposes, the modification shall be limited to that portion of  
22 such gain which is included in federal adjusted gross income.

23 (iv) The amount necessary to prevent the taxation under this act of  
24 any annuity or other amount of income or gain which was properly in-  
25 cluded in income or gain and was taxed under the laws of this state for a  
26 taxable year prior to the effective date of this act, as amended, to the  
27 taxpayer, or to a decedent by reason of whose death the taxpayer acquired  
28 the right to receive the income or gain, or to a trust or estate from which  
29 the taxpayer received the income or gain.

30 (v) The amount of any refund or credit for overpayment of taxes on  
31 or measured by income or fees or payments in lieu of income taxes im-  
32 posed by this state, or any taxing jurisdiction, to the extent included in  
33 gross income for federal income tax purposes.

34 (vi) Accumulation distributions received by a taxpayer as a beneficiary  
35 of a trust to the extent that the same are included in federal adjusted  
36 gross income.

37 (vii) Amounts received as annuities under the federal civil service  
38 retirement system from the civil service retirement and disability fund  
39 and other amounts received as retirement benefits in whatever form  
40 which were earned for being employed by the federal government or for  
41 service in the armed forces of the United States.

42 (viii) Amounts received by retired railroad employees as a supple-  
43 mental annuity under the provisions of 45 U.S.C. 228b (a) and 228c (a)(1)

1 et seq.

2 (ix) Amounts received by retired employees of a city and by retired  
3 employees of any board of such city as retirement allowances pursuant to  
4 K.S.A. 13-14,106, and amendments thereto, or pursuant to any charter  
5 ordinance exempting a city from the provisions of K.S.A. 13-14,106, and  
6 amendments thereto.

7 (x) For taxable years beginning after December 31, 1976, the amount  
8 of the federal tentative jobs tax credit disallowance under the provisions  
9 of 26 U.S.C. 280 C. For taxable years ending after December 31, 1978,  
10 the amount of the targeted jobs tax credit and work incentive credit dis-  
11 allowances under 26 U.S.C. 280 C.

12 (xi) For taxable years beginning after December 31, 1986, dividend  
13 income on stock issued by Kansas Venture Capital, Inc.

14 (xii) For taxable years beginning after December 31, 1989, amounts  
15 received by retired employees of a board of public utilities as pension and  
16 retirement benefits pursuant to K.S.A. 13-1246, 13-1246a and 13-1249  
17 and amendments thereto.

18 (xiii) For taxable years beginning after December 31, 2004, amounts  
19 contributed to and the amount of income earned on contributions de-  
20 posited to an individual development account under K.S.A. 2005 Supp.  
21 74-50,201, et seq., and amendments thereto.

22 (xiv) For all taxable years commencing after December 31, 1996, that  
23 portion of any income of a bank organized under the laws of this state or  
24 any other state, a national banking association organized under the laws  
25 of the United States, an association organized under the savings and loan  
26 code of this state or any other state, or a federal savings association or-  
27 ganized under the laws of the United States, for which an election as an  
28 S corporation under subchapter S of the federal internal revenue code is  
29 in effect, which accrues to the taxpayer who is a stockholder of such  
30 corporation and which is not distributed to the stockholders as dividends  
31 of the corporation.

32 (xv) For all taxable years beginning after December 31, 1999,  
33 amounts not exceeding \$2,000, or \$4,000 for a married couple filing a  
34 joint return, for each designated beneficiary which are contributed to a  
35 family postsecondary education savings account established under the  
36 Kansas postsecondary education savings program for the purpose of pay-  
37 ing the qualified higher education expenses of a designated beneficiary  
38 at an institution of postsecondary education. For all taxable years begin-  
39 ning after December 31, 2004, amounts not exceeding \$3,000, or \$6,000  
40 for a married couple filing a joint return, for each designated beneficiary  
41 which are contributed to a family postsecondary education savings ac-  
42 count established under the Kansas postsecondary education savings pro-  
43 gram for the purpose of paying the qualified higher education expenses

1 of a designated beneficiary at an institution of postsecondary education.  
2 The terms and phrases used in this paragraph shall have the meaning  
3 respectively ascribed thereto by the provisions of K.S.A. 2005 Supp. 75-  
4 643, and amendments thereto, and the provisions of such section are  
5 hereby incorporated by reference for all purposes thereof.

6 (xvi) For the tax year beginning after December 31, 2004, an amount  
7 not exceeding \$500; for the tax year beginning after December 31, 2005,  
8 an amount not exceeding \$600; for the tax year beginning after December  
9 31, 2006, an amount not exceeding \$700; for the tax year beginning after  
10 December 31, 2007, an amount not exceeding \$800; for the tax year  
11 beginning December 31, 2008, an amount not exceeding \$900; and for  
12 all taxable years commencing after December 31, 2009, an amount not  
13 exceeding \$1,000 of the premium costs for qualified long-term care in-  
14 surance contracts, as defined by subsection (b) of section 7702B of public  
15 law 104-191.

16 (xvii) For all taxable years beginning after December 31, 2004,  
17 amounts received by taxpayers who are or were members of the armed  
18 forces of the United States, including service in the Kansas army and air  
19 national guard, as a recruitment, sign up or retention bonus received by  
20 such taxpayer as an incentive to join, enlist or remain in the armed services  
21 of the United States, including service in the Kansas army and air national  
22 guard, and amounts received for repayment of educational or student  
23 loans incurred by or obligated to such taxpayer and received by such  
24 taxpayer as a result of such taxpayer's service in the armed forces of the  
25 United States, including service in the Kansas army and air national guard.

26 (xviii) For all taxable years beginning after December 31, 2004,  
27 amounts received by taxpayers who are eligible members of the Kansas  
28 army and air national guard as a reimbursement pursuant to K.S.A. 48-  
29 281, and amendments thereto, and amounts received for death benefits  
30 pursuant to K.S.A. 48-282, and amendments thereto, or pursuant to sec-  
31 tion 1 or section 2 of chapter 207 of the 2005 session laws of Kansas, and  
32 amendments thereto, to the extent that such death benefits are included  
33 in federal adjusted gross income of the taxpayer.

34 (xix) *For all taxable years commencing after December 31, 2006, the*  
35 *amount included in federal taxable income attributable to capital gains*  
36 *on the sale or exchange of capital assets which would otherwise be in-*  
37 *cluded in gross income of the taxpayer to the extent of the amount of such*  
38 *capital gains which is used to purchase or lease commercial and industrial*  
39 *machinery and equipment on or after January 1, 2007, for the purpose*  
40 *of expanding an existing business or the creation of a new business. As*  
41 *provided in this subsection: (A) "Commercial and industrial machinery*  
42 *and equipment" means property classified for property tax purposes*  
43 *within subclass (5) of class 2 of section 1 of article 11 of the constitution*

1 *of the state of Kansas, railroad property classified for property tax pur-*  
2 *poses within subclass (3) of class 2 of section 1 of article 11 of the consti-*  
3 *tution of the state of Kansas and telecommunications machinery and*  
4 *equipment; and (B) “telecommunications machinery and equipment”*  
5 *means network administrative assets, central office equipment, informa-*  
6 *tion, station and customer equipment, and outside plant equipment of a*  
7 *telecommunications company.*

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

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

17 Sec. 2. K.S.A. 79-32,138 is hereby amended to read as follows: 79-  
18 32,138. (a) Kansas taxable income of a corporation taxable under this act  
19 shall be the corporation’s federal taxable income for the taxable year with  
20 the modifications specified in this section.

21 (b) There shall be added to federal taxable income: (i) The same  
22 modifications as are set forth in subsection (b) of K.S.A. 79-32,117, and  
23 amendments thereto, with respect to resident individuals.

24 (ii) The amount of all depreciation deductions claimed for any real  
25 or tangible personal property upon which the deduction is allowed by  
26 K.S.A. 79-32,161, and amendments thereto.

27 (iii) The amount of all depreciation deductions claimed for any prop-  
28 erty upon which the deduction allowed by K.S.A. 79-32,168, and amend-  
29 ments thereto, is claimed.

30 (iv) The amount of any charitable contribution deduction claimed for  
31 any contribution or gift to or for the use of any racially segregated edu-  
32 cational institution.

33 (c) There shall be subtracted from federal taxable income: (i) The  
34 same modifications as are set forth in subsection (c) of K.S.A. 79-32,117,  
35 and amendments thereto, with respect to resident individuals.

36 (ii) The federal income tax liability for any taxable year commencing  
37 prior to December 31, 1971, for which a Kansas return was filed after  
38 reduction for all credits thereon, except credits for payments on estimates  
39 of federal income tax, credits for gasoline and lubricating oil tax, and for  
40 foreign tax credits if, on the Kansas income tax return for such prior year,  
41 the federal income tax deduction was computed on the basis of the federal  
42 income tax paid in such prior year, rather than as accrued. Notwithstand-  
43 ing the foregoing, the deduction for federal income tax liability for any

1 year shall not exceed that portion of the total federal income tax liability  
2 for such year which bears the same ratio to the total federal income tax  
3 liability for such year as the Kansas taxable income, as computed before  
4 any deductions for federal income taxes and after application of subsections  
5 (d) and (e) of this section as existing for such year, bears to the  
6 federal taxable income for the same year.

7 (iii) An amount for amortization of the amortizable costs of a certified  
8 oil production process as computed under K.S.A. 79-32,161, and amend-  
9 ments thereto.

10 (iv) An amount for the amortization deduction for a solar energy sys-  
11 tem allowed pursuant to K.S.A. 79-32,168, and amendments thereto.

12 (v) For all taxable years commencing after December 31, 1987, the  
13 amount included in federal taxable income pursuant to the provisions of  
14 section 78 of the internal revenue code.

15 (vi) For all taxable years commencing after December 31, 1987, 80%  
16 of dividends from corporations incorporated outside of the United States  
17 or the District of Columbia which are included in federal taxable income.

18 (vii) *For all taxable years commencing after December 31, 2006, the*  
19 *amount included in federal taxable income attributable to capital gains*  
20 *on the sale or exchange of capital assets which would otherwise be in-*  
21 *cluded in gross income of the taxpayer to the extent of the amount of such*  
22 *capital gains which is used to purchase or lease commercial and industrial*  
23 *machinery and equipment on or after January 1, 2007, for the purpose*  
24 *of expanding an existing business or the creation of a new business. As*  
25 *provided in this subsection: (A) "Commercial and industrial machinery*  
26 *and equipment" means property classified for property tax purposes*  
27 *within subclass (5) of class 2 of section 1 of article 11 of the constitution*  
28 *of the state of Kansas, railroad property classified for property tax pur-*  
29 *poses within subclass (3) of class 2 of section 1 of article 11 of the consti-*  
30 *tution of the state of Kansas and telecommunications machinery and*  
31 *equipment; and (B) "telecommunications machinery and equipment"*  
32 *means network administrative assets, central office equipment, informa-*  
33 *tion, station and customer equipment, and outside plant equipment of a*  
34 *telecommunications company.*

35 (d) If any corporation derives all of its income from sources within  
36 Kansas in any taxable year commencing after December 31, 1979, its  
37 Kansas taxable income shall be the sum resulting after application of  
38 subsections (a) through (c) hereof. Otherwise, such corporation's Kansas  
39 taxable income in any such taxable year, after excluding any refunds of  
40 federal income tax and before the deduction of federal income taxes pro-  
41 vided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-3271  
42 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any refund  
43 of federal income tax as determined under paragraph (iv) of subsection

1 (b) of K.S.A. 79-32,117, and amendments thereto, and minus the deduc-  
2 tion for federal income taxes as provided by subsection (c)(ii) shall be  
3 such corporation's Kansas taxable income.

4 (e) A corporation may make an election with respect to its first taxable  
5 year commencing after December 31, 1982, whereby no addition modi-  
6 fications as provided for in subsection (b)(ii) of K.S.A. 79-32,138 and  
7 subtraction modifications as provided for in subsection (c)(iii) of K.S.A.  
8 79-32,138, as those subsections existed prior to their amendment by this  
9 act, shall be required to be made for such taxable year.

10 Sec. 3. K.S.A. 79-32,138 and K.S.A. 2005 Supp. 79-32,117 are  
11 hereby repealed.

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