

## SENATE BILL No. 357

By Committee on Assessment and Taxation

1-12

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9 AN ACT concerning income taxation; relating to failure to file return or  
10 filing incorrect or insufficient return; penalties; amending K.S.A. 2005  
11 Supp. 79-3228 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 79-3228 is hereby amended to read as  
15 follows: 79-3228. (a) For all taxable years ending prior to January 1, 2002,  
16 if any taxpayer, without intent to evade the tax imposed by this act, shall  
17 fail to file a return or pay the tax, if one is due, at the time required by  
18 or under the provisions of this act, but shall voluntarily file a correct return  
19 of income or pay the tax due within six months thereafter, there shall be  
20 added to the tax an additional amount equal to 10% of the unpaid balance  
21 of tax due plus interest at the rate prescribed by subsection (a) of K.S.A.  
22 79-2968, and amendments thereto, from the date the tax was due until  
23 paid.

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

41 (c) For all taxable years ending after December 31, 2001, if any tax-  
42 payer fails to file a return or pay the tax if one is due, at the time required  
43 by or under the provisions of this act, there shall be added to the tax an

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

17 (d) If any taxpayer who has failed to file a return or has filed an  
18 incorrect or insufficient return, and after notice from the director refuses  
19 or neglects within 20 days to file a proper return, the director shall de-  
20 termine the income of such taxpayer according to the best available in-  
21 formation ~~and~~. *If the director determines tax is due, the director shall*  
22 *assess the tax together with a penalty of 50% of the unpaid balance of tax*  
23 *due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-*  
24 *2968, and amendments thereto, from the date the tax was originally due*  
25 *to the date of payment. If the director determines a refund is due, the*  
26 *director shall retain 50% of such refund as a penalty, except that such*  
27 *penalty shall not exceed \$250.*

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

38 (f) Any person who willfully signs a fraudulent return shall be guilty  
39 of a felony, and upon conviction thereof shall be punished by imprison-  
40 ment for a term not exceeding five years. The term "person" as used in  
41 this section includes any agent of the taxpayer, and officer or employee  
42 of a corporation or a member or employee of a partnership, who as such  
43 officer, employee or member is under a duty to perform the act in respect

1 of which the violation occurs.

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

10 (2) No penalty shall be assessed hereunder with respect to any un-  
11 derpayment of income tax liability reported on any amended return filed  
12 by any taxpayer who at the time of filing pays such underpayment and  
13 whose return is not being examined at the time of filing.

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

17 (h) In case of a nonresident or any officer or employee of a corpo-  
18 ration, the failure to do any act required by or under the provisions of  
19 this act shall be deemed an act committed in part at the office of the  
20 director.

21 (i) In the case of a nonresident individual, partnership or corporation,  
22 the failure to do any act required by or under the provision of this act  
23 shall prohibit such nonresident from being awarded any contract for con-  
24 struction, reconstruction or maintenance or for the sale of materials and  
25 supplies to the state of Kansas or any political subdivision thereof until  
26 such time as such nonresident has fully complied with this act.

27 Sec. 2. K.S.A. 2005 Supp. 79-3228 is hereby repealed.

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