

SENATE BILL No. 365

AN ACT enacting the Kansas estate tax act; repealing K.S.A. 2005 Supp. 79-15,100, 79-15,101, 79-15,102, 79-15,103, 79-15,105, 79-15,109, 79-15,111, 79-15,112, 79-15,113, 79-15,116, 79-15,117, 79-15,118, 79-15,119, 79-15,125, 79-15,128, 79-15,129, 79-15,130, 79-15,131, 79-15,132, 79-15,133, 79-15,134, 79-15,135, 79-15,136, 79-15,137, 79-15,138, 79-15,139, 79-15,140, 79-15,141, 79-15,142, 79-15,143, 79-15,144 and 79-15,145.

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

Section 1. The provisions of this act shall be known and may be cited as the Kansas estate tax act.

Sec. 2. As used in this act, unless the context otherwise requires: (a) Any term used in this act shall have the same meaning as when used in a comparable context in the internal revenue code. Any reference in this act to the “internal revenue code” shall mean the provisions of the United States internal revenue code of 1986, as such code exists on December 31, 2005, unless otherwise specified. Any reference in this act to a specific provision of the internal revenue code shall be to such provision as it exists on December 31, 2005.

(b) “Decedent” includes the testator, intestate, grantor, bargainer, vendor or donor.

(c) “Director” means the director of taxation of the Kansas department of revenue.

(d) “Distributee” means a beneficiary, legatee, devisee, heir, next of kin, grantee, donee, vendee, joint tenant or successor.

(e) “Domicile” refers to that place where a person resides, has an intention to remain and to which they intent to return following any absence.

(f) “Estate” and “property” mean the real, personal and mixed property or interest therein of the decedent which shall pass or be transferred to a distributee, and shall include all personal property within or without the state.

(g) “Executor” and “administrator” means the duly appointed, qualified and acting executor or administrator of the decedent in this state.

(h) “Intangible property” means evidence of value, such as certificates of stock, bonds and promissory notes and includes cash accounts such as certificates of deposit, savings accounts and checking accounts.

(i) “Nonresident decedent” means a decedent other than a resident decedent.

(j) “Personal representative” means the executor, administrator appointed by a Kansas court to serve as such for the estate of the decedent and any other person in actual or constructive possession of any property of the decedent which has a Kansas tax situs.

(k) “Resident decedent” means a person who was domiciled in this state at the time of death. A person who spent in the aggregate more than six months of the calendar year immediately preceding their death within this state shall be presumed to have been a resident for purposes of this act, in the absence of proof to the contrary.

(l) “Secretary” means the secretary of revenue, or the secretary’s designee.

(m) “Tax” includes tax, penalty and interest, unless the context of a particular section otherwise requires.

(n) “Tax situs” relates to location of property for the purpose of imposing tax. Real estate or tangible personal property reflected in the Kansas gross estate shall be considered to have a tax situs within Kansas if, at the time of the decedent’s death, the property was physically located within the state of Kansas. Oil and gas leases on lands in this state and all interests created thereby, or arising therefrom, shall be considered as tangible personal property having an actual situs in this state. Intangible property reflected in the Kansas gross estate, including moneys on deposit with financial institutions, shall be presumed to have a tax situs within Kansas if the decedent was a resident decedent at the time of death.

(o) “Transfer” includes the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment in the manner herein prescribed.

Sec. 3. (a) A tax is hereby imposed on the taxable estate of every resident decedent, and every nonresident decedent who owned real, personal or intangible property with a tax situs in Kansas.

(b) The tax imposed by this section shall be computed in accordance with the following schedule:

(A) For tax year 2007:

If the taxable estate is:	The tax is:
Not over \$1,000,000	Zero
Over \$1,000,000 but not over \$2,000,000	3.0% of excess over \$1,000,000
Over \$2,000,000 but not over \$5,000,000	\$30,000 plus 6.0% of excess over \$2,000,000
Over \$5,000,000 but not over \$10,000,000	\$210,000 plus 8.0% of excess over \$5,000,000
Over \$10,000,000	\$610,000 plus 10.0% of excess over \$10,000,000

(B) For tax year 2008:

If the taxable estate is:	The tax is:
Not over \$1,000,000	zero
Over \$1,000,000 but not over \$2,000,000	1.0% of excess over \$1,000,000
Over \$2,000,000 but not over \$5,000,000	\$10,000 plus 2.0% of excess over \$2,000,000
Over \$5,000,000 but not over \$10,000,000	\$70,000 plus 5.0% of excess over \$5,000,000
Over \$10,000,000	\$320,000 plus 7.0% of excess over \$10,000,000

(C) For tax year 2009:

If the taxable estate is:	The tax is:
Not over \$1,000,000	zero
Over \$1,000,000 but not over \$2,000,000	0.5% of excess over \$1,000,000
Over \$2,000,000 but not over \$5,000,000	\$5,000 plus 1.0% of excess over \$2,000,000
Over \$5,000,000 but not over \$10,000,000	\$35,000 plus 2.0% of excess over \$5,000,000
Over \$10,000,000	\$135,000 plus 3.0% of excess over \$10,000,000

Sec. 4. When the estate shall consist of property with a tax situs in Kansas and property with a tax situs outside Kansas, the tax imposed under sections 3, and amendments thereto, shall be multiplied by the percentage determined by dividing the value of all property included in the gross estate which is within the jurisdiction of the state of Kansas by the value of all property included in the gross estate.

Sec. 5. The value of the gross estate of a decedent shall be determined by valuing the property included in the gross estate at its fair market value as of the time of the decedent's death, except as provided in section 6, and amendments thereto.

Sec. 6. If the decedent was a resident of Kansas, land that is located in Kansas and treated as land devoted to agricultural use for purposes of K.S.A. 79-1476, and amendments thereto, at the time of the decedent's death shall be valued at its most recent valuation pursuant to K.S.A. 79-1476, and amendments thereto.

Sec. 7. The gross estate shall be determined by including the value of all property, real or personal, tangible or intangible, wherever situated to the extent provided in sections 8 through 17, and amendments thereto.

Sec. 8. The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of death.

Sec. 9. (a) If the decedent made a transfer, by trust or otherwise, of an interest in any property, or relinquished a power with respect to any property, during the one-year period ending on the date of the decedent's death, and the value of such property, or an interest therein, would have been included in the decedent's gross estate if such transferred interest or relinquished power had been retained by the decedent on the date of death, the value of the gross estate shall include the value of any property, or interest therein, which would have been so included.

(b) The provisions of subsection (a) shall not apply to the following:

(1) Any transfer, other than a transfer with respect to a life insurance policy, made during a calendar year to any donee if the decedent was not required by section 6019 of the internal revenue code, other than by reason of section 6019(a)(2) of the internal revenue code, to file any gift tax return for such year with respect to transfers to such donee; and

(2) any bona fide sale for an adequate and full consideration in money or money's worth.

Sec. 10. The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, except in case of a bona fide sale for an adequate and full consideration in money or money's worth, by trust or otherwise, under which the decedent has retained for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death, the possession or enjoyment of, or the right to the income from, the property, or the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

Sec. 11. (a) The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, except in case of a bona fide sale for an adequate and full consideration in money or money's worth, by trust or otherwise, where the enjoyment thereof was subject at the date of the decedent's death to any change through the exercise of a power, in whatever capacity exercisable, by the decedent alone or by the decedent in conjunction with any other person, without regard to when or from what source the decedent acquired such power, to alter, amend, revoke or terminate.

(b) For purposes of this section, the power to alter, amend, revoke or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, revocation or termination takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interest which would have been excluded from the power if the decedent had lived, and for such purpose, if the notice has not been given or the power has not been exercised on or before the date of the decedent's death, such notice shall be considered to have been given, or the power exercised, on the date of the decedent's death.

Sec. 12. (a) The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement, other than as insurance under policies on the life of the decedent, if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for life or for any period not ascertainable without reference to the decedent's death or for any period which does not in fact end before the decedent's death.

(b) The provisions of subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement, whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit-sharing plan, shall be considered to be contributed by the decedent if made by reason of the decedent's employment.

Sec. 13. (a) The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth. Where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person. Where any property has been acquired by gift,

bequest, devise or inheritance, as a tenancy by the entirety by the decedent and spouse, to the extent of $\frac{1}{2}$ of the value thereof, or, where so acquired by the decedent and any other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, the value of decedent's interest herein shall be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

(b) Notwithstanding the provisions of subsection (a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is $\frac{1}{2}$ of the value of such qualified joint interest. For purposes of this subsection, the term "qualified joint interest" means any interest in property held by the decedent and the decedent's spouse as tenants by the entirety, or joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

Sec. 14. (a) The value of the gross estate shall include the value of all property: (1) To the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includable in the decedent's gross estate under sections 9 through 11, and amendments thereto. For purposes of this subsection, the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised; and

(2) to the extent of any property with respect to which the decedent by will, or by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includable in the decedent's gross estate under section 9 or 10, and amendments thereto, exercises a power of appointment by creating another power of appointment which under applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(b) For purposes of subsection (a): (1) The term "general power of appointment" means a power which is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors or the creditors of the decedent's estate, except that:

(A) A power to consume, invade or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent shall not be deemed a general power of appointment; and

(B) in the case of a power of appointment which is exercisable by the decedent only in conjunction with another person:

(i) If the power is not exercisable by the decedent except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment;

(ii) if the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment, with respect to the property subject to the decedent's power, which the person may exercise in such person's own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power; and

(iii) if, after the application of clauses (i) and (ii), the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the num-

ber of such persons, including the decedent, in favor of whom such power is exercisable.

For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person, if it is exercisable in favor of such person, the person's estate, the person's creditors or the creditors of the person's estate.

(2) The lapse of a power of appointment during the life of the individual possessing the power shall be considered a release of such power, except that the lapse of a power as provided in this subsection shall apply during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts: (A) \$5,000; or (B) 5% of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

Sec. 15. The value of the gross estate shall include the value of all property:

(a) To the extent of the amount receivable by the personal representative as insurance under policies on the life of the decedent; and

(b) to the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at the time of death any of the incidents of ownership exercisable either alone or in conjunction with any other person. For purposes of this subsection, the term "incident of ownership" includes a reversionary interest, whether arising by the express terms of the policy or other instrument or by operation of law, only if the value of such reversionary interest exceeded 5% of the value of the policy immediately before the death of the decedent. As used in this subsection, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or the decedent's estate, or may be subject to a power of disposition by the decedent. The value of a reversionary interest at any time shall be determined, without regard to the fact of the decedent's death, by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to rules and regulations prescribed by the secretary. In determining the value of a possibility that the policy or proceeds thereof may be subject to power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or the decedent's estate.

Sec. 16. If any one of the transfers, trusts, interests, rights or powers enumerated and described in sections 9 through 11 and 14, and amendments thereto, is made, created, exercised or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

Sec. 17. (a) The value of the gross estate shall include the value of any property in which the decedent has at the time of death a qualifying interest for life under section 23, and amendments thereto, if a deduction for Kansas estate tax purposes was allowed with respect to such property at the death of the decedent's spouse, pursuant to section 23, and amendments thereto, or any prior Kansas law. If a deduction was allowed with respect to only a fraction of the property, only that fraction shall be included in the estate of the decedent.

(b) Property includable in the gross estate of the decedent under subsection (a) shall be treated as property passing from the decedent.

Sec. 18. For purposes of the tax imposed by section 3, and amendments thereto, the value of the taxable estate shall be determined by deducting from the value of the gross estate the deductions provided for in sections 19 through 23, and amendments thereto.

Sec. 19. (a) For purposes of the tax imposed by section 3, and amendments thereto, the value of the taxable estate shall be determined by deducting from the gross estate such amounts as are allowable by the laws of the jurisdiction, whether within or without the state of Kansas, under which the estate is being administered for:

- (1) Funeral expenses;
- (2) administration expenses;
- (3) claims against the estate; and
- (4) unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate.

(b) Subject to the limitation in subsection (c)(1), there shall be deducted for purposes of determining the value of the taxable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (a), if such property were subject to claims, and such amounts are paid before the expiration of the period of limitation for assessment provided in section 49, and amendments thereto.

(c) (1) (A) The deduction allowed by this section in the case of claims against the estate, unpaid mortgages or any indebtedness, when founded on a promise or agreement, shall be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth, except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 22, and amendments thereto, for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 22, and amendments thereto, if such promise or agreement constituted a bequest.

(B) Any income taxes on income received after the death of the decedent, or property taxes not accrued before the decedent's death or any estate, succession, legacy or inheritance taxes shall not be deductible under this section.

(2) In the case of the amounts described in subsection (a), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the estate tax return. For purposes of this section, the term "property subject to claims" means property includable in the gross estate of the decedent which, or the avails of which, would under the applicable law bear the burden of the payment of such deductions in the final adjustment and settlement of the estate, except that the value of the property shall be reduced by the amount of the deduction under section 21, and amendments thereto, attributable to such property.

Sec. 20. For purposes of the tax imposed by section 3, and amendments thereto, the value of the taxable estate shall be determined by deducting from the value of the gross estate losses incurred during the settlement of estates arising from fires, storms, shipwrecks or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise.

Sec. 21. For purposes of the tax imposed by section 3, and amendments thereto, the value of the taxable estate shall be determined by deducting from the value of the gross estate the value of all property included therein which is specifically exempt from estate taxation by the laws of this state or laws of the United States.

Sec. 22. For purposes of the tax imposed by section 3, and amendments thereto, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises or transfers to or for the use of any charitable organization, regardless of the form or manner of such bequests, legacies, devises or transfers, but only to the extent that such interest is included in determining the value of the gross estate. For purposes of this section, "charitable organization" means those corporations, organizations, associations, societies, institutions, foundations, governmental units or agencies described in section 2055(a) of the internal revenue code.

Sec. 23. (a) For purposes of the tax imposed by section 3, and amendments thereto, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the

decedent to a surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(b) (1) In the case of qualified terminable interest property, such property shall be treated as passing to the surviving spouse, and no part of such property shall be treated as passing to any person other than the surviving spouse.

(2) For purposes of this paragraph:

(A) The term “qualified terminable interest property” means property:

(i) Which passes from the decedent;

(ii) in which the surviving spouse has a qualifying income interest for life; and

(iii) to which an election under this paragraph applies.

(B) The surviving spouse has a qualifying income interest for life if:

(i) The surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property; and

(ii) no person has a power to appoint any part of the property to any person other than the surviving spouse, except that this subsection shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property, regardless of whether the property from which the annuity is payable can be separately identified.

(C) The term “property” includes an interest in property.

(D) A specific portion of property shall be treated as separate property.

(E) An election under this paragraph with respect to any property shall be made by the executor on the return of tax required by section 25, and amendments thereto. Such an election, once made, shall be irrevocable.

(3) In the case of an annuity included in the gross estate of the decedent under section 13, and amendments thereto, or, in the case of an interest in an annuity arising under the community property laws of a state, included in the gross estate of the decedent under section 9, and amendments thereto, where only the surviving spouse has the right to receive payments before the death of such surviving spouse:

(A) The interest of such surviving spouse shall be treated as a qualifying income interest for life; and

(B) the executor shall be treated as having made an election under this subsection with respect to such annuity unless the executor otherwise elects on the return of tax required by section 25, and amendments thereto. Such an election under this subsection, once made, is irrevocable.

Sec. 24. Amounts allowable as a deduction in computing the taxable estate of a decedent shall not be allowed as a deduction, or as an offset against the sales price of property in determining gain or loss, in computing the Kansas taxable income of the estate or the Kansas taxable income of any other person, unless there is filed, within the time and in the manner and form prescribed by rules and regulations adopted by the secretary, a statement that the amounts have not been allowed as deductions under section 19 or 21, and amendments thereto, and a waiver of the right to have such amounts allowed at any time as deductions under section 19 or 21, and amendments thereto. The provisions of this section shall not apply with respect to deductions allowed pursuant to law relating to income in respect of decedents.

Sec. 25. (a) Except as otherwise provided, the personal representative of the estate of every decedent whose gross estate exceeds \$1,000,000 shall make and file in the office of the director a return on forms prepared and furnished by the secretary.

(b) In the event there is more than one personal representative, all personal representatives shall be jointly responsible for completing and filing one return reporting all of the assets of the estate except as hereinafter provided.

(c) If, after exercising due diligence, the personal representative making and filing such return is unable to make a complete return as to any part of the gross estate of the decedent, the personal representative shall make and file a return reporting all information as to the estate assets,

including a description thereof and the name of any person holding a legal or beneficial interest in the assets, to the best of such personal representative's knowledge.

Sec. 26. Returns made in accordance with the provisions of this act shall be filed within nine months after the date of the decedent's death.

Sec. 27. (a) Upon a showing of good cause the director may grant a reasonable extension of time for filing a return.

(b) A request for an extension of time to file shall be made in the manner and form prescribed by the director. No such extension shall be for more than six months, except in the event of litigation directly involving the estate.

(c) Notwithstanding a grant of an extension of time to file, the taxes shall be due and payable at the same time and in the same manner as if no such extension had been granted.

Sec. 28. All returns, statements or other documents required to be filed under any provision of this act shall be filed with the office of the director of taxation, or at such other place as the secretary may prescribe by rule or regulation.

Sec. 29. (a) Any return, statement or other document required to be made under any provision of this act shall be signed in accordance with forms or rules and regulations prescribed by the secretary.

(b) The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by the individual.

(c) Except as otherwise provided by the secretary, any return, declaration, statement or other document required to be made under any provision of this act shall contain or be verified by a written declaration that it is made under penalties of perjury.

Sec. 30. If any person fails to make a return required by this act or prescribed by rules or regulations thereunder, but consents to disclose all information necessary for the preparation thereof, the director may prepare such return. After such person signs the return, such return may be received by the director as the return of such person.

Sec. 31. (a) The director is authorized to provide with respect to any amount required to be shown on a return, statement or any other document, that if the amount of such item is other than a whole-dollar amount either:

(1) The fractional part of a dollar shall be disregarded; or

(2) the fractional part of a dollar shall be disregarded unless it amounts to \$.50 or more, in which case the amount, determined without regard to the fractional part of a dollar, shall be increased by \$1.

(b) Any person making a return, statement or other document shall be allowed, under regulations prescribed by the secretary, to make such return, statement or other document without regard to subsection (a).

(c) The provisions of this section shall not be applicable to items which must be taken into account in making the computations necessary to determine the amount required to be shown on a form, but shall be applicable only to such final amount.

Sec. 32. (a) All reports and returns required under the provisions of this act shall be preserved for three years and thereafter until the director of taxation orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided in subsection (c), subsection (g) of K.S.A. 17-7511 or 46-1106, and amendments thereto, it shall be unlawful for the director of taxation, or any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the value of any estate or any particulars set forth or disclosed in any report, return, federal return or federal return information required under the provisions of the Kansas estate tax act. It shall be unlawful for the director of taxation, any deputy, agent, clerk or other officer or employee of the department of revenue engaged in the administration of the Kansas estate tax act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing

tax returns or reports required by the laws of the state of Kansas, by any other state or by the United States government or to accept any employment for the purpose of advising, preparing material or data or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Kansas, any other state or by the United States government.

(c) Nothing herein shall be construed to prohibit the publication of statistics, classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection of returns by the attorney general or other legal representatives of the state. Nothing in this section shall prohibit the post auditor from access to all estate tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106, and amendments thereto. Nothing in this section shall be construed to prohibit the disclosure of the taxpayer's name, social security number, last known address and total tax liability, including penalty and interest, from estate tax returns to a debt collection agency contracting with the secretary of revenue pursuant to K.S.A. 75-5140 through 75-5143, and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (d).

(d) Any violation of subsection (b) or (c) shall be a class B nonperson misdemeanor. If the offender is an officer or employee of the state, such officer or employee shall be dismissed from office.

(e) Notwithstanding the provisions of this section, the secretary of revenue may permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an estate or inheritance tax, or the authorized representative of either, to inspect the estate tax returns made under the provisions of the Kansas estate tax act and the secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in estate tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the Kansas estate tax act, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of the tax laws of such state, the state of Kansas or of the United States.

(f) Notwithstanding the provisions of this section, the estate tax return filed with respect to the estate of a decedent, upon written request, shall be open to inspection by or disclosure to: (1) The personal representative of such decedent's estate; and (2) any heir at law, next of kin or beneficiary under the will of such decedent or a donee or distributee of the decedent's property, but only if the secretary of revenue finds that such heir at law, next of kin, beneficiary, donee or distributee has a material interest which will be affected by information contained therein.

Sec. 33. (a) The tax imposed under the provisions of this act shall be paid by the personal representative.

(b) The personal representative, or each personal representative if there is more than one, shall be personally liable for the tax to the extent of the property in the personal representative's actual or constructive possession which has a Kansas tax situs, less any amounts the personal representative is required to pay to third parties who have a legally enforceable claim to the property that has priority under state or federal law over the tax imposed by this act.

Sec. 34. (a) The tax imposed under the provisions of this act shall be paid at the expiration of nine months after the death of the decedent.

(b) The person required to make the return, without assessment or notice and demand from the director, shall pay such tax to the office of the director of taxation, or at such other place as the secretary may prescribe by rule or regulation.

Sec. 35. (a) If any personal representative fails to file a return or pay the tax if one is due, at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to 1% of the unpaid balance of the tax due for each month or fraction thereof during which such failure continues, not exceeding 24% in the aggregate,

plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

(b) If after review of a return the director determines that the underpayment of tax was due to the failure of the personal representative to make a reasonable attempt to comply with the provisions of this act, a penalty shall be imposed in the amount of 25% of the unpaid balance of tax due.

(c) If any personal representative has failed to file a return or has filed an incorrect or insufficient return, and after notice from the director refuses or neglects within 20 days to file a proper return, the director shall determine the value of the taxable estate according to the best available information and assess the tax together with a penalty of 50% of the unpaid balance of tax due plus interest at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was originally due to the date of payment.

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

(e) Any personal representative who intentionally signs a fraudulent return shall be guilty of a felony, and upon conviction shall be punished by imprisonment for a term not exceeding five years.

(f) (1) Whenever the director determines that the failure of the personal representative to comply with the provisions of subsection (a), (b) or (c) was due to reasonable causes, the director may waive or reduce any of the penalties upon making a record of the reasons therefor.

(2) No penalty shall be assessed hereunder with respect to any underpayment of estate tax liability reported on any amended return filed by any personal representative who at the time of filing pays such underpayment and where the return is not being examined at the time of filing.

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

Sec. 36. As soon as practicable after the return is filed, the director shall make an examination thereof and shall issue final determinations of tax liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto. If the tax found due is less than the amount paid, the excess paid shall be refunded to the personal representative who paid the tax, except that no refund of \$100 or less shall be made. If the tax found due is greater than the amount previously paid, or if a claim for a refund is denied, notice shall be mailed to the person filing the return by registered or certified mail. An order finding additional tax shall be accompanied by a notice and demand for payment. The tax shall be paid within 30 days thereafter, together with interest on the additional tax from the date the tax was due unless an appeal is taken in the manner provided by K.S.A. 74-2438, and amendments thereto. No additional tax shall be assessed for less than \$100.

Sec. 37. Whenever the director has reason to believe that a personal representative may be unwilling or unable to fulfill the requirements of section 25, and amendments thereto, relating to the filing of a return, or of section 30, and amendments thereto, relating to the payment of the tax, or that a distributee receiving property liable for the payment of tax is about to depart from the state or to remove any property which is subject to tax, including proceeds from the sale or disposal of such property, or to conceal themselves or such property, or to transfer, commingle, disburse or otherwise manipulate such property in order to frustrate or preclude the calculation of tax due thereon or collection of tax due therefrom, or to do any other act tending to prejudice, jeopardize or render wholly or partially ineffective the determination or collection of tax unless proceedings be brought without delay, the director shall immediately

make an assessment for all such taxes due, noting such finding on the assessment. Thereupon notices of lien may be filed in accordance with section 40, and amendments thereto, or, in the director's discretion, a warrant may be issued for the collection of tax as provided in section 41, and amendments thereto. Any person liable for tax may within 30 days from the date of filing of such notice of lien or warrant request review in the manner prescribed by K.S.A. 79-3226, and amendments thereto, on the correctness of the jeopardy assessment. If the director finds that in certain cases collection of the tax may be jeopardized by delay, the director, in the exercise of discretion, immediately may issue notice and demand for payment of tax found to be due. In such cases, collection may be stayed by the giving of such security as the director may consider adequate.

Sec. 38. If the personal representative makes written application to the director for determination of the amount of tax and discharge from personal liability therefor, the director, as soon as possible, and in any event within nine months after the making of such application, or, if the application is made before the return is filed, then within nine months after the return is filed, but not after the expiration of the period prescribed for the assessment of tax in section 49, and amendments thereto, shall notify the personal representative of the amount of the tax for which the personal representative is liable. The personal representative, on payment of the amount of which they are notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

Sec. 39. (a) Unless the estate tax imposed by this act is sooner paid in full, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction therefor, shall be divested of such lien.

(b) If the taxes imposed under this act are not paid when due, the spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 8 through 17, and amendments thereto, to the extent of the value of such property at the time of the decedent's death, shall be personally liable for such tax, except that the provisions of this subsection shall not apply to the trustee of an employee's trust which meets the requirements of section 401(a) of the internal revenue code. Any part of such property transferred by, or transferred by a transferee of such spouse, transferee, trustee, surviving tenant, person in possession or beneficiary to a purchaser or holder of a security interest shall be divested of the lien provided for in subsection (a) and a similar lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

(c) The provisions of section 38, and amendments thereto, relating to discharge of the personal representative from personal liability, shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate, or any interest therein, has been transferred to a purchaser or a holder of a security interest, in which case such part, or such interest, shall not be subject to a lien or to any claim or demand for such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees or distributees.

Sec. 40. (a) Whenever the director has reason to believe that any property which is subject to tax, including proceeds from the sale or disposal of such property, may be transferred, commingled, disbursed, concealed within or removed from the state, or otherwise manipulated in order to frustrate or preclude the collection of tax from such property, the director may file against such property written notice of the lien imposed by section 39, and amendments thereto.

(b) A notice of lien shall be filed with the register of deeds in any county where any property subject to tax is located, upon forms pre-

scribed by the secretary. In the event an exact tax liability has been determined, the notice may recite the amount of such liability.

(c) Upon satisfaction of the lien, or upon its release or divestiture in accordance with section 43, and amendments thereto, the director shall issue notice of the release of such lien, on forms prescribed by the director.

Sec. 41. (a) If the personal representative fails to timely pay the taxes imposed by section 3, and amendments thereto, the director may enforce the director's lien by the issuance of a warrant under the director's hand and official seal, directed to the sheriff of any county of the state, commanding such sheriff to levy upon and sell the real and personal property of the distributee found within the sheriff's county for the payment of the amount thereof, with the added penalty, interest and the cost of executing the warrant, and to return such warrant to the director and pay to the director the money collected by virtue thereof not more than 60 days from the date of the warrant. The sheriff, within five days after the receipt of the warrant, shall file with the clerk of the district court of the sheriff's county a copy thereof, and thereupon the clerk shall enter in the appearance docket in appropriate columns, the name of the distributee named in the warrant, the amount of the tax or portion thereof and interest for which the warrant is issued and the date such copy is filed. The amount of such warrant docketed shall thereupon become a lien upon the title to, and interest in, the real property of the distributee against whom it is issued in the same manner, as a judgment duly docketed in the office of such clerk. The sheriff shall proceed in the same manner and with like effect as prescribed by law with respect to executions issued against property upon judgments of a court of record and shall be entitled to the same fees for the sheriff's services to be collected in the same manner.

(b) The court in which the warrant is docketed shall have jurisdiction over all subsequent proceedings as fully as though a judgment had been rendered in the court. In the discretion of the director, a warrant of like terms, force and effect may be issued and directed to any officer or employee of the director, and in the execution thereof such officer or employee shall have all the powers conferred by laws upon sheriffs, and the subsequent proceedings thereunder shall be the same as provided where the warrant is issued directly to the sheriff. The distributee shall have the right to redeem the real estate within a period of 18 months from the date of such sale. If a warrant be returned, unsatisfied in full, the director shall have the same remedies to enforce the claim for taxes as if the state of Kansas had recovered judgment against the distributee for the amount of the tax. No law exempting any goods and chattels, land and tenements from forced sale under execution shall apply to a levy and sale under any such warrants or upon any execution issued upon any judgment rendered in any action for inheritance taxes. The director shall have the right at any time after the warrant has been returned unsatisfied or satisfied only in part, to issue alias warrants until the full amount of the tax is collected.

Sec. 42. In cases where the tax is due and payable, the director of taxation may bring an action for collection. All actions shall be prosecuted by the attorney for the director in the name of the state, and such actions may be brought in the same courts as other actions for money.

Sec. 43. The lien imposed by section 39, and amendments thereto, shall be divested or released only in accordance with the following provisions:

(a) The value of the gross estate is below the filing threshold established by section 25, and amendments thereto;

(b) the lien shall be divested upon the payment of all taxes, penalty and interest due;

(c) the lien shall be divested after 10 years from the date of the decedent's death;

(d) that portion of the decedent's property which is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien;

(e) the lien shall not affect any property after it has been sold or disposed of for value by the executors or administrators in accordance with K.S.A. 59-1410 and 59-1413, and amendments thereto, or otherwise

in accordance with law, but in all such cases a lien shall attach to the proceeds realized from any such sale or other disposition for all taxes and interest thereon which are or may be due on such property. Tax due or payable from the proceeds of such sale or disposal of such property shall be collected by the executor in accordance with the provisions of section 33, and amendments thereto, or by the director in accordance with the provisions of section 42, and amendments thereto, or in accordance with the provisions of section 41, and amendments thereto; and

(f) that portion of the decedent's property which must be sold, transferred or disposed of for the payment of taxes against the estate shall be divested of the lien, but only to the extent a specific release of has been granted by the director.

Sec. 44. (a) Whenever the lien imposed by section 39, and amendments thereto, has been released in accordance with the provisions of section 43, and amendments thereto, and the personal representative makes written request for proof of such release, the director shall furnish such personal representative with notice of release. Any such notice of release shall be in such form as prescribed by the director and may include use of or reference to the closing letter issued by the director or may be included as part of that closing letter.

(b) When the notice of release applies to real property, such notice may be filed in the office of the register of deeds in any county where any such real property included in the gross estate is located or, when the estate is involved in proceedings before the district court, with the court. At the discretion of the director, such notice of release may be filed by the director or may be provided to the personal representative for filing.

Sec. 45. (a) As soon as practicable after the return is filed and the taxes paid, the director shall issue a closing letter. Such closing letter shall be issued to the personal representative upon the director being satisfied that there has been a final determination of all taxes due and that all such taxes have been paid.

(b) The closing letter shall be applicable only to assets reported in the return filed with the director. To the extent the gross assets of the decedent were reported, the issuance of a closing letter shall be conclusive evidence that all taxes have been determined and paid and shall release any lien which attached to the decedent's property, or the property of any personal representative or distributee, unless notice of such lien has been filed under section 40, and amendments thereto.

Sec. 46. The director shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, the entire amount of revenue collected or received from the tax imposed by this act less amounts withheld as provided in section 47, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund, and shall be applicable to such purposes as the legislature by law may direct.

Sec. 47. There is hereby created the estate tax abatement refund fund. Such fund shall be maintained by the director of taxation from estate tax collection and held by the state treasurer for the prompt payment of all abatements and refunds. If the director of taxation finds that claim for refund duly filed by a personal representative should be allowed, or if a court upon a final judgment shall find that the estate tax, penalty or interest paid by any personal representative is in excess of the amount legally due, then the director of taxation shall issue the director's vouchers to the director of accounts and reports for the refund to the personal representative of such tax, penalty or interest together with interest provided for hereinafter. Upon receipt of such voucher properly executed and endorsed, the director of accounts and reports shall issue the director's warrants to the state treasurer for the payment to the personal representative out of the estate tax abatement refund fund. The director of taxation shall file a duplicate of such voucher and also a statement which shall set forth the reasons why such abatement or refund was allowed. Upon allowance of an abatement or refund of any tax, penalty or interest paid, interest shall be allowed and paid on the amount of such abatement or refund at the rate prescribed and determined pursuant to K.S.A. 79-

2968, and amendments thereto, from the date such tax, penalty or interest was paid to the date the refund or abatement of estate taxes is made.

Sec. 48. (a) The director of taxation shall fix and charge an amount pursuant to K.S.A. 45-218 and 45-219, and amendments thereto, for furnishing certified copies of returns.

(b) All such fees collected shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 49. (a) Except as otherwise provided in this section, the amount of any tax imposed by this act shall be assessed within three years after the return was filed, whether or not such return was filed on or after the date prescribed, or the tax as shown to be due on such return was paid, whichever is the later date, and no proceedings in court for the collection of such taxes shall be begun after the expiration of such period. Where the assessment of any estate tax imposed under this act has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court but only if begun within one year after the period of limitation as provided in this act.

(b) For the purposes of this section, a return of tax required under this act filed before the last day prescribed by law shall be deemed to be filed on such last day and any tax shown to be due on such return and paid before the last day prescribed by law shall be deemed to be paid on such last day.

(c) In the case of a false or fraudulent return with intent to evade tax or in the case of failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun at any time. If the personal representative omits from the gross estate items includable in such gross estate as exceed 25% of the gross estate stated in the return, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time within six years after the return was filed. In determining the items omitted from the gross estate, there shall not be taken into account any item which is omitted from the gross estate if such item is disclosed in the return, in a manner adequate to apprise the director of the nature and amount of such item.

(d) No refund or credit shall be allowed by the director after three years from the date the return was filed, or one year after an assessment is made, whichever is the later date, unless before the expiration of such period a claim therefor is filed by the personal representative.

(e) In case a personal representative has made claim for a refund, such personal representative shall have the right to commence a suit for the recovery of the same at the expiration of six months after the filing of a claim for refund, if no action has been taken by the director.

(f) (1) Any personal representative of an estate of a decedent who has been notified of any adjustment by the internal revenue service shall notify the director within 90 days of the date if such adjustment is agreed to or becomes final between the estate and the internal revenue service. Such adjustments shall be reported by filing an amended return and a copy of the revenue agent's report detailing such adjustments, along with any other statements or documents as may be necessary to explain and support the adjustments.

(2) Notwithstanding the provisions of subsection (a) or (d), additional estate tax may be assessed and proceedings in court for collection of such taxes may be commenced and any refund or credit may be allowed by the director of taxation within 180 days following receipt of any such report of adjustments by the Kansas department of revenue. No assessment shall be made nor any refund or credit shall be allowed under the provisions of this paragraph except to the extent the same is attributable to changes in the estate due to the adjustments indicated by such report.

(3) In the event of failure to comply with the provisions of this subsection, the statute of limitations shall be tolled.

Sec. 50. The secretary of revenue shall adopt such rules and regulations as may be deemed necessary to carry out the purposes of this act.

Sec. 51. The provisions of this act shall apply to the estates of all decedents dying after December 31, 2006, but before January 1, 2010. The provisions of article 15 of chapter 79, as such provisions existed prior

to January 1, 2007, shall be applicable to the estates of all decedents dying before January 1, 2007.

Sec. 52. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section.

Sec. 53. On January 1, 2010, the provisions of sections 1 through 53, and amendments thereto, are hereby repealed.

Sec. 54. K.S.A. 2005 Supp. 79-15,100, 79-15,101, 79-15,102, 79-15,103, 79-15,105, 79-15,109, 79-15,111, 79-15,112, 79-15,113, 79-15,116, 79-15,117, 79-15,118, 79-15,119, 79-15,125, 79-15,128, 79-15,129, 79-15,130, 79-15,131, 79-15,132, 79-15,133, 79-15,134, 79-15,135, 79-15,136, 79-15,137, 79-15,138, 79-15,139, 79-15,140, 79-15,141, 79-15,142, 79-15,143, 79-15,144 and 79-15,145 are hereby repealed.

Sec. 55. This act shall take effect and be in force from and after January 1, 2007, and its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.