

HOUSE BILL No. 2520

By Committee on Taxation

1-22

9 AN ACT concerning taxation; relating to willful failure to collect tax or
10 to commit other violations; amending K.S.A. 79-32,107 and K.S.A.
11 2009 Supp. 79-2971, 79-32,100c and 79-3643 and repealing the exist-
12 ing sections.

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

15 Section 1. K.S.A. 2009 Supp. 79-2971 is hereby amended to read as
16 follows: 79-2971. (a) Any individual who is responsible for collection or
17 payment of excise taxes imposed under the provisions of K.S.A. 12-1692
18 et seq., 12-1696 et seq., 41-501 et seq., 79-3301 et seq., 79-3370 et seq.,
19 79-3401 et seq., 79-3490 et seq., 79-34,108 et seq., 79-3817 et seq., 79-
20 4101 et seq. or 79-41a01, and amendments thereto, or for control, receipt,
21 custody or disposal of funds due and owing under such acts who willfully
22 fails to collect such tax, or account for and pay over such tax, or attempts
23 in any manner to evade or defeat such tax or the payment thereof shall
24 be personally liable for the total amount of the tax evaded, or not col-
25 lected, or not accounted for and paid over, together with any interest and
26 penalty imposed thereon. The provisions of this section shall apply re-
27 gardless of the: (1) Relationship with the taxpayer held by such individual;
28 (2) form under which the taxpayer conducts business, whether a sole
29 proprietorship, partnership or corporation; or (3) dissolution of the busi-
30 ness. *As used in this section, "willfully" has the same meaning as such*
31 *term has for federal tax purposes in 26 U.S.C. 6672.*

32 (b) A notice of assessment issued to a responsible individual shall be
33 considered to be a proceeding for the collection of the tax liability of the
34 business. If the liability of the business is determined in a proceeding that
35 has become final, any notice of assessment to a responsible individual
36 must be issued within three years after the proceeding against the busi-
37 ness became final.

38 (c) Within 60 days after the mailing of a notice of assessment to a
39 responsible individual, the person assessed may request an informal con-
40 ference with the secretary of revenue under K.S.A. 79-3226, and amend-
41 ments thereto, for a determination of whether such person is a respon-
42 sible individual under subsection (a), and for a determination of the tax
43 liability of the business.

1 (d) If a notice of assessment and a warrant are issued to a responsible
2 individual pursuant to a jeopardy provision of chapter 79 of the Kansas
3 Statutes Annotated, the person assessed may request that the informal
4 conference held pursuant to subsection (c) be expedited. When such a
5 request is made, the secretary shall schedule the conference to be held
6 within 21 days after receipt of the request and shall issue a written final
7 determination within 21 days after the close of the conference.

8 Sec. 2. K.S.A. 2009 Supp. 79-32,100c is hereby amended to read as
9 follows: 79-32,100c. (a) If an employer, payer, person or organization
10 deducting and withholding tax fails to deduct and withhold the tax as
11 required under this act, and thereafter, the income tax against which the
12 tax may be credited is paid, the tax required to be deducted and withheld
13 shall not be collected from the employer, payer, person or organization.
14 The payment of such tax does not, however, operate to relieve the em-
15 ployer, payer, person or organization from liability for penalties, interest
16 or additions to the tax applicable with respect to such failure to deduct
17 and withhold. The employer, payer, person or organization shall not be
18 relieved under this provision from liability for payment of the tax required
19 to be withheld unless it can be shown that the income tax against which
20 the tax required to be withheld under this act may be credited has been
21 paid.

22 (b) Every agent or other person having control, receipt, custody or
23 disposal of, or paying the wages of an employee or group of employees
24 employed by one or more employers, is for the purpose of this act des-
25 ignated to be an employer. In the case of the corporation, the officers
26 and board of directors are likewise considered employers. Employers of
27 classes named in this section shall be subject to all the provisions of law
28 including penalties as is their principal. Any employer who willfully fails
29 to collect the tax imposed by the Kansas withholding tax act or truthfully
30 account for any pay over such tax, or willfully attempts in any manner to
31 evade or defeat any tax or the payment thereof, shall be subject to a
32 penalty equal to the total amount of the tax evaded, or not collected, or
33 not accounted for and paid over in addition to other penalties provided
34 by law. *As used in this section, "willfully" has the same meaning as such*
35 *term has for federal tax purposes in 26 U.S.C. 6672.*

36 Sec. 3. K.S.A. 79-32,107 is hereby amended to read as follows: 79-
37 32,107. (a) All penalties and interest prescribed by K.S.A. 79-3228, and
38 amendments thereto, for noncompliance with the income tax laws of Kan-
39 sas shall be applicable for noncompliance with the provisions of the Kan-
40 sas withholding and declaration of estimated tax act relating to withhold-
41 ing tax which shall be enforced in the same manner as the Kansas income
42 tax act. A penalty at the same rate per annum prescribed by subsection
43 (b) of K.S.A. 79-2968, and amendments thereto, for interest upon delin-

1 quent or unpaid taxes shall be applied and added to a taxpayer's amount
2 of underpayment of estimated tax due from the date the estimated tax
3 payment was due until the same is paid or until the 15th day of the fourth
4 month following the close of the taxable year for which such estimated
5 tax is a credit, whichever date is earlier, but such penalty shall not be
6 added if the total amount thereof does not exceed \$1. For purposes of
7 this subsection, the amount of underpayment of estimated tax shall be
8 the excess of the amount of the installment which would be required to
9 be paid if the estimated tax were equal to 90% of the tax shown on the
10 return for the taxable year or, if no return was filed, 90% of the tax for
11 such year, over the amount, if any, of the installment paid on or before
12 the last date prescribed for payment. Amounts due from any employer
13 on account of withholding or from any taxpayer for estimated tax may be
14 collected by the director in the manner provided for the collection of
15 state income tax in K.S.A. 79-3235, and amendments thereto. For pur-
16 poses of this subsection, "underpayment of tax" means the difference
17 between the amount of tax actually paid and the amount of tax which
18 would have been required to be paid to avoid penalty pursuant to sub-
19 section (b) or (c).

20 (b) No penalty or interest shall be imposed upon any individual with
21 respect to any underpayment of any installment if the total amount of all
22 payments of estimated tax made on or before the last date prescribed for
23 the payment of such installment equals or exceeds the amount which
24 would have been required to be paid on or before such date if the esti-
25 mated tax were whichever of the following is the least:

26 (1) The tax shown on the return of the individual for the preceding
27 taxable year, if a return showing a liability for tax was filed by the indi-
28 vidual for the preceding taxable year;

29 (2) zero if no return was required to be filed or if the tax liability on
30 the individual's return was less than \$200 for the preceding taxable year;

31 (3) an amount equal to 66 $\frac{2}{3}$ %, in the case of individuals referred
32 to in subsection (b) of K.S.A. 79-32,102, and amendments thereto, and
33 90%, in the case of all other individuals, of the tax for the taxable year
34 computed by placing on an annualized basis, pursuant to rules and reg-
35 ulations adopted by the secretary of revenue, the taxable income for the
36 months in the taxable year ending before the month in which the install-
37 ment is required to be made.

38 (c) No penalty or interest shall be imposed upon any corporation with
39 respect to any underpayment of any installment of estimated tax if the
40 total amount of all payments of estimated tax made on or before the last
41 date prescribed for the payment of such installment equals or exceeds
42 the amount which would have been required to be paid on or before such
43 date if the estimated tax were whichever of the following is the least:

- 1 (1) The tax shown on the return of the corporation for the preceding
2 taxable year, if a return showing a liability for tax was filed by the cor-
3 poration for the preceding taxable year, or zero if no return was required
4 to be filed, or if the tax liability on the corporation's return was less than
5 \$500 for the preceding taxable year; or
- 6 (2) (A) an amount equal to 90% of the tax for the taxable year com-
7 puted by placing on an annualized basis the taxable income: (i) For the
8 first three months of the taxable year, in the case of the installment re-
9 quired to be paid in the fourth month; (ii) for the first three months or
10 for the first five months of the taxable year, in the case of the installment
11 required to be paid in the sixth month; (iii) for the first six months or for
12 the first eight months of the taxable year in the case of the installment
13 required to be paid in the ninth month; and (iv) for the first nine months
14 or for the first 11 months of the taxable year, in the case of the installment
15 required to be paid in the 12th month of the taxable year.
- 16 (B) For purposes of this subsection (2), the taxable income shall be
17 placed on an annualized basis by (i) multiplying by 12 the taxable income
18 referred to in subsection (2)(A), and (ii) dividing the resulting amount by
19 the number of months in the taxable year (three, five, six, eight, nine, or
20 11, as the case may be) referred to in subsection (2)(A).
- 21 (d) If the employer, in violation of the provisions of this act, fails to
22 deduct and withhold under this chapter, and thereafter the tax against
23 which such withholding may be credited is paid, the amount otherwise
24 required to be deducted and withheld shall not be collected from the
25 employer; ~~but~~ This subsection shall in no case relieve the employer from
26 liability for any penalties or additions to the tax otherwise applicable in
27 respect of such failure to deduct and withhold.
- 28 (e) Any person required to collect, truthfully account for, and pay
29 over any tax imposed by this act, who willfully fails to collect such tax, or
30 truthfully account for and pay over such tax, or willfully attempts in any
31 manner to evade or defeat any such tax or the payment thereof, shall in
32 addition to the other penalties of this section be liable to a penalty equal
33 to the total amount of the tax evaded, or not collected, or not accounted
34 for and paid over. *As used in this section, "willfully" has the same meaning*
35 *as such term has for federal tax purposes in 26 U.S.C. 6672.*
- 36 (f) In case of failure by any employer required by subsection (b) of
37 K.S.A. 79-3298, and amendments thereto, to remit any amount of with-
38 held taxes by the date prescribed therefor, unless it is shown that such
39 failure is due to reasonable cause and not due to willful neglect, there
40 shall be imposed upon such person a penalty of 15% of the amount of
41 the underpayment. For purposes of this subsection, the term "underpay-
42 ment" means the excess of the amount of the tax required to be withheld
43 and remitted over the amount, if any, remitted on or before the date

1 prescribed therefor. The failure to remit for any withholding period shall
2 be deemed not to continue beyond the last date prescribed for filing the
3 annual return as required by subsection (d) of K.S.A. 79-3298, and
4 amendments thereto. Penalty and interest as prescribed by K.S.A. 79-
5 3228, and amendments thereto, shall not begin to accrue under subsec-
6 tion (a) of this section on the amount of any such underpayment until the
7 due date of the annual return for the calendar year in which such failure
8 to remit occurs.

9 (g) Whenever the secretary or the secretary's designee determines
10 that the failure of the taxpayer to comply with the provisions of subsec-
11 tions (a), (e), or (f) of this section was due to reasonable causes, the
12 secretary or the secretary's designee may waive or reduce any of said
13 penalties and may reduce the interest rate to the underpayment rate
14 prescribed and determined for the applicable period under section 6621
15 of the federal internal revenue code as in effect on January 1, 1994, upon
16 making a record of the reasons therefor.

17 Sec. 4. K.S.A. 2009 Supp. 79-3643 is hereby amended to read as
18 follows: 79-3643. (a) Any individual who is responsible for collection or
19 payment of sales or compensating tax or control, receipt, custody or dis-
20 posal of funds due and owing under the Kansas retailers' sales and com-
21 pensating tax acts who willfully fails to collect such tax, or account for and
22 pay over such tax, or attempts in any manner to evade or defeat such tax
23 or the payment thereof shall be personally liable for the total amount of
24 the tax evaded, or not collected, or not accounted for and paid over,
25 together with any interest and penalty imposed thereon. The provisions
26 of this section shall apply regardless of the: (1) Relationship with the
27 retailer held by such individual; (2) form under which the retailer con-
28 ducts business, whether a sole proprietorship, partnership or corporation;
29 or (3) dissolution of the business. *As used in this section, "willfully" has*
30 *the same meaning as such term has for federal tax purposes in 26 U.S.C.*
31 *6672.*

32 (b) A notice of assessment issued to a responsible individual shall be
33 considered to be a proceeding for the collection of the tax liability of the
34 business. If the liability of the business is determined in a proceeding that
35 has become final, any notice of assessment against a responsible individual
36 must be issued within three years after the proceeding against the busi-
37 ness has become final.

38 (c) Within 60 days after the mailing of a notice of assessment against
39 a responsible individual, the person assessed may request an informal
40 conference with the secretary of revenue under K.S.A. 79-3226, and
41 amendments thereto, for a determination of whether such person is a
42 responsible individual under subsection (a) and for a determination of the
43 tax liability of the business.

- 1 (d) If notice of assessment and warrant are issued to a responsible
2 individual pursuant to K.S.A. 79-3610, and amendments thereto, or any
3 other jeopardy provision of chapter 79 of the Kansas Statutes Annotated,
4 the person assessed may request that the informal conference held pur-
5 suant to subsection (c) be expedited. When such a request is made, the
6 secretary shall schedule the conference to be held within 21 days after
7 receipt of the request and shall issue a written final determination within
8 21 days after the close of the conference.
- 9 (e) The provisions of this section shall be deemed to be supplemental
10 to the Kansas retailers' sales and compensating tax acts.
- 11 Sec. 5. K.S.A. 79-32,107 and K.S.A. 2009 Supp. 79-2971, 79-32,100c
12 and 79-3643 are hereby repealed.
- 13 Sec. 6. This act shall take effect and be in force from and after its
14 publication in the statute book.