

Substitute for HOUSE BILL No. 2521

By Committee on Taxation

2-12

10 AN ACT concerning taxation; relating to electronic filing of returns, re-
11 ports or other documents; **[disclosure of information;]** intangibles
12 tax, filing procedure; amending K.S.A. 12-1,104 and K.S.A. 2009 Supp.
13 **[79-3234,]** 79-3298 and 79-3607 and repealing the existing sections.
14

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

16 Section 1. K.S.A. 12-1,104 is hereby amended to read as follows: 12-
17 1,104. (a) Every taxpayer receiving earnings which are taxable under the
18 provisions of this act shall file a return on or before ~~July 1 in the year~~
19 ~~1983~~ *April 15 following the taxable year*, with the county clerk of the
20 county in which the gross earnings has acquired situs ~~and on or before~~
21 ~~April 15 of each year thereafter with the director of taxation of the state~~
22 ~~department of revenue~~. Such return shall contain such information and
23 be made upon forms prescribed ~~and provided~~ by the director of taxation
24 *and provided by the county clerk*. ~~On or before June 30 of each year, the~~
25 ~~director of taxation shall certify to the county clerk of each county the~~
26 ~~amount of taxable earnings received by each taxpayer during the taxable~~
27 ~~year of the taxpayer ending in the preceding calendar year~~. The county
28 clerk shall compute the tax due and payable on such taxable earnings of
29 each taxpayer and shall certify such amount to the county treasurer. The
30 director of taxation shall ~~include forms~~ *prescribe to the county clerk the*
31 *form* for the making of such return and a current listing of each taxing
32 subdivision imposing a tax on gross earnings derived from money, notes
33 and other evidence of debt for which the listing has been received pur-
34 suant to subsection (d) of K.S.A. 12-1,101 by July 15 of the year preceding
35 the year of imposition of the tax ~~with each state income tax return dis-~~
36 ~~tributed by the state department of revenue~~.

37 (b) A return listing the gross earnings of every resident conservatee
38 which are taxable pursuant to this act shall be filed by the conservator of
39 such conservatee. The return of every resident minor shall be filed by the
40 minor's father, if living and of sound mind, but if such father is not living
41 or is an incapacitated person, by the minor's mother or if neither the
42 father or mother is living, by the person having possession or control of
43 the minor's property.

1 A return listing the gross earnings of a resident trustee or cotrustee of
2 a revocable trust created by a resident settlor which are taxable pursuant
3 to this act shall be filed by the resident settlor. A return listing the gross
4 earnings of a resident trustee or cotrustee of an irrevocable or testamen-
5 tary trust created by a resident settlor or a resident decedent which are
6 taxable pursuant to this act shall be filed by any beneficiary residing in
7 this state who receives earnings from such trust, to the extent of such
8 earnings, otherwise a return listing such gross earnings shall be filed by
9 the resident trustee to the extent that such earnings are not distributed.
10 A nonresident beneficiary shall not be obligated to file a return listing
11 earnings taxable pursuant to this act nor shall the trustee be obligated to
12 file a return listing the same to the extent they were distributed to a
13 nonresident beneficiary. Where a resident trustee or cotrustee is acting
14 under a revocable, irrevocable or testamentary trust of a nonresident set-
15 tlor or nonresident decedent, the trustee shall not be required to file a
16 return listing earnings taxable pursuant to this act, but any beneficiary of
17 such trust, residing in this state, who receives or is entitled to receive
18 such earnings from such trust shall be required to file a return. Any res-
19 ident of this state including the settlor of a revocable trust who receives
20 or is entitled to receive earnings taxable pursuant to this act from a trust,
21 not having a situs in this state, shall file a return listing such resident's
22 share of such earnings.

23 For the purposes of this act, a settlor of a revocable trust shall be
24 deemed to be entitled to the gross earnings on money, notes and other
25 evidence of debt of such trust whether or not such settlor actually receives
26 the same and a beneficiary shall be deemed to be entitled to a share of
27 such earnings if all or a specific part or percentage of the net income of
28 the trust must be distributed to such beneficiary or if the beneficiary may
29 withdraw all or a specific part of the net income. If such beneficiary may
30 receive earnings only on the exercise of discretion by the trustee or on
31 the occurrence of an event outside of the beneficiary's sole control such
32 beneficiary shall not be deemed to have received the earnings and shall
33 file a return listing only earnings actually received. If earnings of a trust
34 which are taxable pursuant to this act are accumulated and subsequently
35 distributed in a different calendar year than the year in which received
36 by the trust and if the same are reported as income under the revenue
37 laws of Kansas and regulations promulgated thereunder, and if a return
38 listing such earnings has not been filed by the trustees in the year in
39 which earned, then a return listing such earnings shall be filed by such
40 beneficiary in the year in which the same are reported under the revenue
41 laws of Kansas, but otherwise a return listing the same shall not be filed.
42 Where the beneficiary of any trust is required to file a return listing
43 earnings which are taxable pursuant to this act and which are held in

1 trust, such beneficiary for purposes of this act shall be deemed to have
2 received or to be entitled to receive such beneficiary's pro rata share of
3 the earnings without specific allocation, unless the trust provides other-
4 wise, and based upon the proportion which the beneficiary's share of the
5 earnings bears to the total earnings of the trust. A return listing gross
6 earnings taxable under this act which belong to the estate of a resident
7 decedent shall be filed by the executor or administrator. If the decedent
8 is a nonresident, such executor or administrator shall not be required to
9 file a return listing such gross earnings.

10 A return listing the gross earnings of persons, companies or corpora-
11 tions which are taxable pursuant to this act, whose assets are in the hands
12 of receivers shall be filed by such receivers and a return listing the gross
13 earnings belonging to a corporation, and subject to this act, shall be filed
14 by some person designated for that purpose by such corporation.

15 A return listing the gross earnings which are taxable pursuant to this
16 act which belong to a corporation, association or a partnership shall be
17 listed by an agent or partner. Unless subject to tax by reason of K.S.A.
18 12-1,103, *and amendments thereto*, no return listing the gross earnings
19 from money, notes and other evidence of debt collected or received by
20 any agent or representative of any person, company, or corporation, which
21 is to be transmitted immediately to such person, company or corporation,
22 shall be filed by such agent or representative, but such agent or repre-
23 sentative ~~shall~~, upon request, *shall* state under oath the amount of such
24 money or credits and ~~to whom the same has~~ *the person, company or*
25 *corporation to whom such money or credits have* been or is to be
26 transmitted.

27 Taxes levied pursuant to this act shall be paid by the person or fiduciary
28 required to file such return.

29 **[Sec. 2. K.S.A. 2009 Supp. 79-3234 is hereby amended to read**
30 **as follows: 79-3234. (a) All reports and returns required by this act**
31 **shall be preserved for three years and thereafter until the director**
32 **orders them to be destroyed.**

33 **[(b) Except in accordance with proper judicial order, or as pro-**
34 **vided in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A.**
35 **46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments**
36 **thereto, it shall be unlawful for the secretary, the director, any**
37 **deputy, agent, clerk or other officer, employee or former em-**
38 **ployee of the department of revenue or any other state officer or**
39 **employee or former state officer or employee to divulge, or to**
40 **make known in any way, the amount of income or any particulars**
41 **set forth or disclosed in any report, return, federal return or fed-**
42 **eral return information required under this act; and it shall be**
43 **unlawful for the secretary, the director, any deputy, agent, clerk**

1 or other officer or employee engaged in the administration of this
2 act to engage in the business or profession of tax accounting or to
3 accept employment, with or without consideration, from any per-
4 son, firm or corporation for the purpose, directly or indirectly, of
5 preparing tax returns or reports required by the laws of the state
6 of Kansas, by any other state or by the United States government,
7 or to accept any employment for the purpose of advising, prepar-
8 ing material or data, or the auditing of books or records to be used
9 in an effort to defeat or cancel any tax or part thereof that has
10 been assessed by the state of Kansas, any other state or by the
11 United States government.

12 [(c) The secretary or the secretary's designee may: (1) Publish
13 statistics, so classified as to prevent the identification of particular
14 reports or returns and the items thereof;

15 [(2) allow the inspection of returns by the attorney general or
16 other legal representatives of the state;

17 [(3) provide the post auditor access to all income tax reports or
18 returns in accordance with and subject to the provisions of sub-
19 section (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments
20 thereto;

21 [(4) disclose taxpayer information from income tax returns to
22 persons or entities contracting with the secretary of revenue where
23 the secretary has determined disclosure of such information is es-
24 sential for completion of the contract and has taken appropriate
25 steps to preserve confidentiality;

26 [(5) disclose to the secretary of commerce the following: (A)
27 Specific taxpayer information related to financial information pre-
28 viously submitted by the taxpayer to the secretary of commerce
29 concerning or relevant to any income tax credits, for purposes of
30 verification of such information or evaluating the effectiveness of
31 any tax credit program administered by the secretary of com-
32 merce; and (B) findings related to a compliance audit conducted
33 by the department of revenue upon the request of the secretary
34 of commerce pursuant to K.S.A. 2009 Supp. 74-50,215, and amend-
35 ments thereto;

36 [(6) disclose income tax returns to the state gaming agency to
37 be used solely for the purpose of determining qualifications of li-
38 censees of and applicants for licensure in tribal gaming. Any in-
39 formation received by the state gaming agency shall be confiden-
40 tial and shall not be disclosed except to the executive director,
41 employees of the state gaming agency and members and employ-
42 ees of the tribal gaming commission;

43 [(7) disclose the taxpayer's name, last known address and res-

1 idency status to the department of wildlife and parks to be used
2 solely in its license fraud investigations;

3 [(8) disclose the name, residence address, employer or Kansas
4 adjusted gross income of a taxpayer who may have a duty of sup-
5 port in a title IV-D case to the secretary of the Kansas department
6 of social and rehabilitation services for use solely in administrative
7 or judicial proceedings to establish, modify or enforce such sup-
8 port obligation in a title IV-D case. In addition to any other limits
9 on use, such use shall be allowed only where subject to a protective
10 order which prohibits disclosure outside of the title IV-D proceed-
11 ing. As used in this section, “title IV-D case” means a case being
12 administered pursuant to part D of title IV of the federal social
13 security act (42 U.S.C. §651 et seq.) and amendments thereto. Any
14 person receiving any information under the provisions of this sub-
15 section shall be subject to the confidentiality provisions of subsec-
16 tion (b) and to the penalty provisions of subsection (e);

17 [(9) permit the commissioner of internal revenue of the United
18 States, or the proper official of any state imposing an income tax,
19 or the authorized representative of either, to inspect the income
20 tax returns made under this act and the secretary of revenue may
21 make available or furnish to the taxing officials of any other state
22 or the commissioner of internal revenue of the United States or
23 other taxing officials of the federal government, or their author-
24 ized representatives, information contained in income tax reports
25 or returns or any audit thereof or the report of any investigation
26 made with respect thereto, filed pursuant to the income tax laws,
27 as the secretary may consider proper, but such information shall
28 not be used for any other purpose than that of the administration
29 of tax laws of such state, the state of Kansas or of the United States;

30 [(10) communicate to the executive director of the Kansas lot-
31 tery information as to whether a person, partnership or corpora-
32 tion is current in the filing of all applicable tax returns and in the
33 payment of all taxes, interest and penalties to the state of Kansas,
34 excluding items under formal appeal, for the purpose of deter-
35 mining whether such person, partnership or corporation is eligible
36 to be selected as a lottery retailer;

37 [(11) communicate to the executive director of the Kansas rac-
38 ing commission as to whether a person, partnership or corporation
39 has failed to meet any tax obligation to the state of Kansas for the
40 purpose of determining whether such person, partnership or cor-
41 poration is eligible for a facility owner license or facility manager
42 license pursuant to the Kansas parimutuel racing act;

43 [(12) provide such information to the executive director of the

1 **Kansas public employees retirement system for the purpose of de-**
2 **termining that certain individuals' reported compensation is in**
3 **compliance with the Kansas public employees retirement act at**
4 **K.S.A. 74-4901 et seq., and amendments thereto; and**

5 [(13) provide taxpayer information of persons suspected of vi-
6 olating K.S.A. 2009 Supp. 44-766, and amendments thereto, to the
7 staff attorneys of the department of labor for the purpose of de-
8 termining compliance by any person with the provisions of K.S.A.
9 2009 Supp. 44-766, and amendments thereto, which information
10 shall be limited to withholding tax and payroll information, the
11 identity of any person that has been or is currently being audited
12 or investigated in connection with the administration and enforce-
13 ment of the withholding and declaration of estimated tax act,
14 K.S.A. 79-3294 et seq., as amended, and the results or status of
15 such audit or investigation; and

16 [(14) provide such information to the state treasurer for the sole pur-
17 pose of carrying out the provisions of K.S.A. 58-3934 et seq., and amend-
18 ments thereto. Such information shall be limited to current and prior
19 addresses of taxpayers or associated persons who may have knowledge as
20 to the location of an owner of unclaimed property. For the purposes of
21 this paragraph, "associated persons" includes spouses or dependents listed
22 on income tax returns.

23 [(d) Any person receiving information under the provisions of
24 subsection (c) shall be subject to the confidentiality provisions of
25 subsection (b) and to the penalty provisions of subsection (e).

26 [(e) Any violation of subsection (b) or (c) is a class A nonperson
27 misdemeanor and, if the offender is an officer or employee of the
28 state, such officer or employee shall be dismissed from office.

29 [(f) Nothing in this section shall be construed to allow disclo-
30 sure of the amount of income or any particulars set forth or dis-
31 closed in any report, return, federal return or federal return in-
32 formation, where such disclosure is prohibited by the federal
33 internal revenue code as in effect on September 1, 1996, and
34 amendments thereto, related federal internal revenue rules or
35 regulations, or other federal law.]

36 Sec. ~~2~~ [3.] K.S.A. 2009 Supp. 79-3298 is hereby amended to read
37 as follows: 79-3298. (a) Every employer, payer, person or organization
38 deducting and withholding tax shall remit the taxes and file returns in
39 accordance with the following provisions:

40 (1) Whenever the total amount withheld exceeds \$100,000 in any
41 calendar year, the employer, payer, person or organization deducting and
42 withholding tax shall remit the taxes withheld in accordance with the
43 following schedule: Each calendar month shall be divided into four re-

1 remittance periods that end on the 7th, 15th, 21st and the last day of such
2 month. If at the end of any one or all of such remittance periods the total
3 undeposited taxes equal or exceed \$667, the taxes shall be remitted within
4 three banking days. Saturdays, Sundays and legal holidays shall not be
5 treated as banking days.

6 (2) Whenever the total amount withheld exceeds \$8,000 but does not
7 exceed \$100,000 in any calendar year, the employer, payer, person or
8 organization deducting and withholding tax shall remit the taxes withheld
9 for wages paid during the first 15 days of any month on or before the
10 25th day of the month. The employer, payer, person or organization de-
11 ducting and withholding tax shall remit the taxes withheld for wages paid
12 during the remainder of that month on or before the 10th day of the
13 following month.

14 (3) Whenever the total amount withheld exceeds \$1,200 but does not
15 exceed \$8,000 in any calendar year, the employer, payer, person or or-
16 ganization deducting and withholding tax shall remit the taxes withheld
17 during any month on or before the 15th day of the following month.

18 (4) Whenever the total amount withheld exceeds \$200 but does not
19 exceed \$1,200 in any calendar year, the employer, payer, person or or-
20 ganization deducting and withholding tax shall remit the taxes withheld
21 in any calendar quarter on or before the 25th day of the first month
22 following the end of that calendar quarter.

23 (5) Whenever the total amount withheld does not exceed \$200 in any
24 calendar year, the employer, payer, person or organization deducting and
25 withholding tax shall remit the taxes withheld during that year on or be-
26 fore January 25 of the following year.

27 (b) Each remittance required under the provisions of subsection (a)
28 shall be accompanied by a Kansas withholding tax remittance form *and*
29 *shall be filed in the manner* prescribed ~~and furnished~~ by the director,
30 *including electronic filing.*

31 (c) Every employer, payer, person or organization deducting and
32 withholding tax and making remittances pursuant to subsection (a) shall
33 file a return on a form *or in the format and shall file in the manner*
34 *prescribed and furnished* by the director, *including electronic filing*, for
35 each calendar year on or before the last day of February of the following
36 year.

37 (d) The excess of any remittance over the actual taxes withheld in any
38 withholding period shall be credited against the liability for following
39 withholding periods until exhausted. A refund shall be allowed in accord-
40 ance with K.S.A. 79-32,105, and amendments thereto, where an over-
41 payment cannot be adjusted by an offset against the liability for a sub-
42 sequent withholding period.

43 (e) For purposes of determining filing requirements, determinations

1 of amounts withheld during a calendar year by employers, payers, persons
2 or organizations deducting and withholding tax shall be made by the di-
3 rector upon the basis of amounts withheld by those employers, payers,
4 persons or organizations during the preceding calendar year or by esti-
5 mates in cases of employers, payers, persons or organizations having no
6 previous withholding histories. The director is hereby authorized to mod-
7 ify the filing schedule for any employer, payer, person or organization
8 deducting and withholding tax when it is apparent that the original de-
9 termination was inaccurate.

10 (f) Whenever the director has cause to believe that money withheld
11 by an employer, payer, person or organization deducting and withholding
12 tax pursuant to this act may be converted, diverted, lost, or otherwise not
13 timely paid in accordance with this section, the director shall have the
14 power to require returns and payment from any such employer, payer,
15 person or organization at any time at more frequent intervals than pre-
16 scribed by this section in order to secure full payment to the state of all
17 amounts withheld by such employer, payer, person or organization in
18 accordance with this act.

19 Sec. ~~3~~ [4.] K.S.A. 2009 Supp. 79-3607 is hereby amended to read
20 as follows: 79-3607. (a) Retailers shall make returns to the director at the
21 times prescribed by this section *in the manner prescribed by the director,*
22 *including electronic filing,* upon forms *or format* prescribed ~~and furnished~~
23 by the director stating: (1) The name and address of the retailer; (2) the
24 total amount of gross sales of all tangible personal property and taxable
25 services rendered by the retailer during the period for which the return
26 is made; (3) the total amount received during the period for which the
27 return is made on charge and time sales of tangible personal property
28 made and taxable services rendered prior to the period for which the
29 return is made; (4) deductions allowed by law from such total amount of
30 gross sales and from total amount received during the period for which
31 the return is made on such charge and time sales; (5) receipts during the
32 period for which the return is made from the total amount of sales of
33 tangible personal property and taxable services rendered during such pe-
34 riod in the course of such business, after deductions allowed by law have
35 been made; (6) receipts during the period for which the return is made
36 from charge and time sales of tangible personal property made and tax-
37 able services rendered prior to such period in the course of such business,
38 after deductions allowed by law have been made; (7) gross receipts during
39 the period for which the return is made from sales of tangible personal
40 property and taxable services rendered in the course of such business
41 upon the basis of which the tax is imposed. The return shall include such
42 other pertinent information as the director may require. In making such
43 return, the retailer shall determine the market value of any consideration,

1 other than money, received in connection with the sale of any tangible
2 personal property in the course of the business and shall include such
3 value in the return. Such value shall be subject to review and revision by
4 the director as hereinafter provided. Refunds made by the retailer during
5 the period for which the return is made on account of tangible personal
6 property returned to the retailer shall be allowed as a deduction under
7 subdivision (4) of this section in case the retailer has theretofore included
8 the receipts from such sale in a return made by such retailer and paid
9 taxes therein imposed by this act. The retailer shall, at the time of making
10 such return, pay to the director the amount of tax herein imposed, except
11 as otherwise provided in this section. The director may extend the time
12 for making returns and paying the tax required by this act for any period
13 not to exceed 60 days under such rules and regulations as the secretary
14 of revenue may prescribe. When the total tax for which any retailer is
15 liable under this act, does not exceed the sum of \$80 in any calendar year,
16 the retailer shall file an annual return on or before January 25 of the
17 following year. When the total tax liability does not exceed \$3,200 in any
18 calendar year, the retailer shall file returns quarterly on or before the
19 25th day of the month following the end of each calendar quarter. When
20 the total tax liability exceeds \$3,200 in any calendar year, the retailer shall
21 file a return for each month on or before the 25th day of the following
22 month. When the total tax liability exceeds \$32,000 in any calendar year,
23 the retailer shall be required to pay the sales tax liability for the first 15
24 days of each month to the director on or before the 25th day of that
25 month. Any such payment shall accompany the return filed for the pre-
26 ceding month. A retailer will be considered to have complied with the
27 requirements to pay the first 15 days' liability for any month if, on or
28 before the 25th day of that month, the retailer paid 90% of the liability
29 for that fifteen-day period, or 50% of such retailer's liability in the im-
30 mediate preceding calendar year for the same month as the month in
31 which the fifteen-day period occurs computed at the rate applicable in
32 the month in which the fifteen-day period occurs, and, in either case, paid
33 any underpayment with the payment required on or before the 25th day
34 of the following month. Such retailers shall pay their sales tax liabilities
35 for the remainder of each such month at the time of filing the return for
36 such month. Determinations of amounts of liability in a calendar year for
37 purposes of determining filing requirements shall be made by the director
38 upon the basis of amounts of liability by those retailers during the pre-
39 ceding calendar year or by estimates in cases of retailers having no pre-
40 vious sales tax histories. The director is hereby authorized to modify the
41 filing schedule for any retailer when it is apparent that the original de-
42 termination was inaccurate.

43 (b) All model 1, model 2 and model 3 sellers are required to file

1 returns electronically. Any model 1, model 2 or model 3 seller may submit
2 its sales and use tax returns in a simplified format approved by the direc-
3 tor. Any seller that is registered under the agreement, which does not
4 have a legal requirement to register in this state, and is not a model 1,
5 model 2 or model 3 seller, may submit its sales and use tax returns as
6 follows: (1) Upon registration, the director shall provide to the seller the
7 returns required;

8 (2) seller shall file a return anytime within one year of the month of
9 initial registration, and future returns are required on an annual basis in
10 succeeding years; and

11 (3) in addition to the returns required in subsection (b)(2), sellers are
12 required to submit returns in the month following any month in which
13 they have accumulated state and local sales tax funds for this state in the
14 amount of \$1,600 or more.

15 Sec. ~~4~~ **[5.]** K.S.A. 12-1,104 and K.S.A. 2009 Supp. **[79-3234,]** 79-
16 3298 and 79-3607 are hereby repealed.

17 Sec. ~~5~~ **[6.]** This act shall take effect and be in force from and after
18 its publication in the statute book.