

HOUSE BILL No. 2687

By Committee on Taxation

2-11

9 AN ACT concerning income taxation; relating to refunds; penalties;
10 amending K.S.A. 2009 Supp. 79-3228 and repealing the existing
11 section.
12

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

14 Section 1. K.S.A. 2009 Supp. 79-3228 is hereby amended to read as
15 follows: 79-3228. (a) For all taxable years ending prior to January 1, 2002,
16 if any taxpayer, without intent to evade the tax imposed by this act, shall
17 fail to file a return or pay the tax, if one is due, at the time required by
18 or under the provisions of this act, but shall voluntarily file a correct return
19 of income or pay the tax due within six months thereafter, there shall be
20 added to the tax an additional amount equal to 10% of the unpaid balance
21 of tax due plus interest at the rate prescribed by subsection (a) of K.S.A.
22 79-2968, and amendments thereto, from the date the tax was due until
23 paid.

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

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

1 additional amount equal to 1% of the unpaid balance of the tax due for
2 each month or fraction thereof during which such failure continues, not
3 exceeding 24% in the aggregate, plus interest at the rate prescribed by
4 subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date
5 the tax was due until paid. Notwithstanding the foregoing, in the event
6 an assessment is issued following a field audit for any period for which a
7 return was filed by the taxpayer and all of the tax was paid pursuant to
8 such return, a penalty shall be imposed for the period included in the
9 assessment in an amount of 1% per month not exceeding 10% of the
10 unpaid balance of tax due shown in the notice of assessment. If after
11 review of a return for any period included in the assessment, the secretary
12 or secretary's designee determines that the underpayment of tax was due
13 to the failure of the taxpayer to make a reasonable attempt to comply
14 with the provisions of this act, such penalty shall be imposed for the
15 period included in the assessment in the amount of 25% of the unpaid
16 balance of tax due. *For all taxable years ending after December 31, 2009,*
17 *if there is an overpayment of taxes levied or imposed by the state on the*
18 *part of the taxpayer, there shall be added to any refund of taxes paid an*
19 *additional amount equal to 1% of any such refund due for each month or*
20 *fraction thereof during which such overpayment of taxes has not been*
21 *refunded, not exceeding 24% in the aggregate, plus interest at the rate*
22 *prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto,*
23 *from the date the refund was due pursuant to law until paid to the tax-*
24 *payer.*

25 (d) If any taxpayer who has failed to file a return or has filed an
26 incorrect or insufficient return, and after notice from the director refuses
27 or neglects within 20 days to file a proper return, the director shall de-
28 termine the income of such taxpayer according to the best available in-
29 formation and assess the tax together with a penalty of 50% of the unpaid
30 balance of tax due plus interest at the rate prescribed by subsection (a)
31 of K.S.A. 79-2968, and amendments thereto, from the date the tax was
32 originally due to the date of payment.

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

43 (f) Any person who willfully signs a fraudulent return shall be guilty

1 of a felony, and upon conviction thereof shall be punished by imprison-
2 ment for a term not exceeding five years. The term “person” as used in
3 this section includes any agent of the taxpayer, and officer or employee
4 of a corporation or a member or employee of a partnership, who as such
5 officer, employee or member is under a duty to perform the act in respect
6 of which the violation occurs.

7 (g) (1) Whenever the secretary or the secretary’s designee deter-
8 mines that the failure of the taxpayer to comply with the provisions of
9 subsections (a), (b), (c) and (d) of this section was due to reasonable
10 causes, the secretary or the secretary’s designee may waive or reduce any
11 of the penalties and may reduce the interest rate to the underpayment
12 rate prescribed and determined for the applicable period under section
13 6621 of the federal internal revenue code as in effect on January 1, 1994,
14 upon making a record of the reasons therefor.

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

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

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

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

32 Sec. 2. K.S.A. 2009 Supp. 79-3228 is hereby repealed.

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