

As Amended by House Committee

Session of 2019

HOUSE BILL No. 2388

By Committee on Taxation

2-27

1 AN ACT concerning income taxation; relating to corporations; net
2 operating loss carryforward period; ~~addition and subtraction~~
3 ~~modifications for property depreciation~~; amending K.S.A. 2018 Supp.
4 79-32,138 and 79-32,143 and repealing the existing sections **section**.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. ~~K.S.A. 2018 Supp. 79-32,138 is hereby amended to read as~~
8 ~~follows: 79-32,138. (a) Kansas taxable income of a corporation taxable~~
9 ~~under this act shall be the corporation's federal taxable income for the~~
10 ~~taxable year with the modifications specified in this section.~~

11 ~~(b) There shall be added to federal taxable income: (i) The same~~
12 ~~modifications as are set forth in K.S.A. 79-32,117(b), and amendments~~
13 ~~thereto, with respect to resident individuals, except subsections (b)(xix),~~
14 ~~(b)(xx), (b)(xxi), (b)(xxii) and (b)(xxiii);~~

15 ~~(ii) the amount of all depreciation deductions claimed for any~~
16 ~~property upon which the deduction allowed by K.S.A. 2018 Supp. 79-~~
17 ~~32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-~~
18 ~~32,255 or 79-32,256, and amendments thereto, is claimed;~~

19 ~~(iii) the amount of any charitable contribution deduction claimed for~~
20 ~~any contribution or gift to or for the use of any racially segregated~~
21 ~~educational institution;~~

22 ~~(iv) for taxable years commencing December 31, 2013, that portion~~
23 ~~of the amount of any expenditure deduction claimed in determining federal~~
24 ~~adjusted gross income for expenses paid by a taxpayer for health care~~
25 ~~when such expenses were paid or incurred for abortion coverage, a health~~
26 ~~benefit plan, as defined in K.S.A. 65-6731, and amendments thereto, when~~
27 ~~such expenses were paid or incurred for abortion coverage or amounts~~
28 ~~contributed to health savings accounts for such taxpayer's employees for~~
29 ~~the purchase of an optional rider for coverage of abortion in accordance~~
30 ~~with K.S.A. 2018 Supp. 40-2,190, and amendments thereto;~~

31 ~~(v) the amount of any charitable contribution deduction claimed for~~
32 ~~any contribution or gift made to a scholarship granting organization to the~~
33 ~~extent the same is claimed as the basis for the credit allowed pursuant to~~
34 ~~K.S.A. 72-4357, and amendments thereto; and~~

35 ~~(vi) the federal net operating loss deduction; and~~

36 ~~(vii) for all taxable years beginning after December 31, 2017, the-~~

~~1 additional first year depreciation allowance authorized in section 168(k)
2 of the federal internal revenue code of 1986, as amended, only if a
3 taxpayer makes an election by including such amount as an addition
4 modification on the taxpayer's timely filed Kansas income tax return. This
5 election only applies to the taxpayer's property in-service in the
6 applicable tax year.~~

~~7 (e) There shall be subtracted from federal taxable income: (i) The
8 same modifications as are set forth in K.S.A. 79-32,117(e), and
9 amendments thereto, with respect to resident individuals, except
10 subsection (e)(xx);~~

~~11 (ii) the federal income tax liability for any taxable year commencing
12 prior to December 31, 1971, for which a Kansas return was filed after
13 reduction for all credits thereon, except credits for payments on estimates
14 of federal income tax, credits for gasoline and lubricating oil tax, and for
15 foreign tax credits if, on the Kansas income tax return for such prior year,
16 the federal income tax deduction was computed on the basis of the federal
17 income tax paid in such prior year, rather than as accrued. Notwithstanding
18 the foregoing, the deduction for federal income tax liability for any year
19 shall not exceed that portion of the total federal income tax liability for
20 such year which bears the same ratio to the total federal income tax
21 liability for such year as the Kansas taxable income, as computed before
22 any deductions for federal income taxes and after application of
23 subsections (d) and (e) of this section as existing for such year, bears to the
24 federal taxable income for the same year;~~

~~25 (iii) an amount for the amortization deduction allowed pursuant to
26 K.S.A. 2018 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-
27 32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto;~~

~~28 (iv) for all taxable years commencing after December 31, 1987, the
29 amount included in federal taxable income pursuant to the provisions of
30 section 78 of the internal revenue code; and~~

~~31 (v) for all taxable years commencing after December 31, 1987, 80%
32 of dividends from corporations incorporated outside of the United States
33 or the District of Columbia which are included in federal taxable income;
34 and~~

~~35 (vi) for all taxable years beginning after December 31, 2017, an
36 amount for depreciation deduction as provided in section 168 of the
37 federal internal revenue code of 1986, as amended, without consideration
38 of section 168(k) additional depreciation, only if the taxpayer made a
39 valid election pursuant to subsection (b)(vii).~~

~~40 (d) If any corporation derives all of its income from sources within
41 Kansas in any taxable year commencing after December 31, 1979, its
42 Kansas taxable income shall be the sum resulting after application of
43 subsections (a) through (c) hereof. Otherwise, such corporation's Kansas~~

1 taxable income in any such taxable year, after excluding any refunds of
2 federal income tax and before the deduction of federal income taxes
3 provided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-
4 3271 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any
5 refund of federal income tax as determined under K.S.A. 79-32,117(b)(iv),
6 and amendments thereto, and minus the deduction for federal income taxes
7 as provided by subsection (c)(ii) shall be such corporation's Kansas taxable
8 income.

9 ~~(e) A corporation may make an election with respect to its first~~
10 ~~taxable year commencing after December 31, 1982, whereby no addition~~
11 ~~modifications as provided for in subsection (b)(ii) and subtraction~~
12 ~~modifications as provided for in subsection (c)(iii) as those subsections~~
13 ~~existed prior to their amendment by this act, shall be required to be made~~
14 ~~for such taxable year.~~

15 ~~See 2.~~ **Section 1.** K.S.A. 2018 Supp. 79-32,143 is hereby amended to
16 read as follows: 79-32,143. (a) For net operating losses incurred in taxable
17 years beginning after December 31, 1987, *and prior to January 1, 2018*, a
18 net operating loss deduction shall be allowed in the same manner that it is
19 allowed under the federal internal revenue code except that such net
20 operating loss may only be carried forward to each of the 10 taxable years
21 following the taxable year of the net operating loss. *For net operating*
22 *losses incurred in taxable years beginning after December 31, 2017, a net*
23 *operating loss deduction shall be allowed in the same manner that it is*
24 *allowed under the federal internal revenue code except that such net*
25 *operating loss deduction: (1) May only be carried forward to each of the*
26 *20 taxable years following the taxable year of the net operating loss; and*
27 *(2) shall be the lesser of: (A) The aggregate Kansas net operating loss*
28 *carryover to such year; or (B) 80% of Kansas taxable income*
29 *computed without regard to the Kansas net operating loss deduction*
30 *allowable under this section. For net operating farm losses, as defined by*
31 subsection (i) of section 172 of the federal internal revenue code, incurred
32 in taxable years beginning after December 31, 1999, a net operating loss
33 deduction shall be allowed in the same manner that it is allowed under the
34 federal internal revenue code except that such net operating loss may be
35 carried forward to each of the 10 taxable years following the taxable year
36 of the net operating loss. The amount of the net operating loss that may be
37 carried back or forward for Kansas income tax purposes shall be that
38 portion of the federal net operating loss allocated to Kansas under this act
39 in the taxable year that the net operating loss is sustained.

40 (b) The amount of the loss to be carried back or forward will be the
41 federal net operating loss after: (1) All modifications required under this
42 act applicable to the net loss in the year the loss was incurred; and (2) after
43 apportionment as to source in the case of corporations, nonresident

1 individuals for losses incurred in taxable years beginning prior to January
2 1, 1978, and nonresident estates and trusts in the same manner that income
3 for such corporations, nonresident individuals, estates and trusts is
4 required to be apportioned.

5 (c) If a net operating loss was incurred in a taxable year beginning
6 prior to January 1, 1988, the amount of the net operating loss that may be
7 carried back and carried forward and the period for which it may be
8 carried back and carried forward shall be determined under the provisions
9 of the Kansas income tax laws which were in effect during the year that
10 such net operating loss was incurred.

11 (d) If any portion of a net operating loss described in subsections (a)
12 and (b) is not utilized prior to the final year of the carryforward period
13 provided in subsection (a), a refund shall be allowable in such final year in
14 an amount equal to the refund which would have been allowable in the
15 taxable year the loss was incurred by utilizing the three year carryback
16 provided under K.S.A. 79-32,143, as in effect on December 31, 1987,
17 multiplied by a fraction, the numerator of which is the unused portion of
18 such net operating loss in the final year, and the denominator of which is
19 the amount of such net operating loss which could have been carried back
20 to the three years immediately preceding the year in which the loss was
21 incurred. In no event may such fraction exceed 1.

22 (e) Notwithstanding any other provisions of the Kansas income tax
23 act, the net operating loss as computed under subsections (a), (b) and (c) ~~of~~
24 ~~this section~~ shall be allowed in full in determining Kansas taxable income
25 or at the option of the taxpayer allowed in full in determining Kansas
26 adjusted gross income.

27 (f) No refund of income tax which results from a net operating farm
28 loss carry back shall be allowed in an amount exceeding \$1,500 in any
29 year. Any overpayment in excess of \$1,500 may be carried forward to any
30 year or years after the year of the loss and may be claimed as a credit
31 against the tax. The refundable portion of such credit shall not exceed
32 \$1,500 in any year.

33 (g) For tax year 2013, and all tax years thereafter, a net operating loss
34 allowed by this section shall only be available to taxpayers subject to the
35 income tax on corporations imposed pursuant to ~~subsection (e)~~ of K.S.A.
36 79-32,110(c), and amendments thereto, and used only to determine such
37 taxpayer's corporate income tax liability.

38 ~~Sec. 3.~~ **2.** K.S.A. 2018 Supp. ~~79-32,138 and 79-32,143~~ **are** hereby
39 repealed.

40 ~~Sec. 4.~~ **3.** This act shall take effect and be in force from and after its
41 publication in the statute book.