

2012 Kansas Statutes

79-32,100e. Same; subchapter S corporations; partnerships; limited liability companies; exemption; penalties; nonresidents. (a) Corporations for which an election as an S corporation under subchapter S of the federal internal revenue code is in effect are required to deduct and withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to subsection (a) of K.S.A. 79-32,110, and amendments thereto, from a nonresident shareholder's share of Kansas taxable income of the corporation, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the corporation shall make a return and pay over the withheld funds on or before the due date of the S corporation's income tax return, including extensions. Taxes withheld in the name of the nonresident shareholder must be used as credit against taxes due at the time the nonresident files a return of income or other applicable information return for the taxable year.

(b) An S corporation required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The S corporation shall furnish to each nonresident shareholder a written statement as required by K.S.A. 79-3299, and amendments thereto, as proof of the amount of the nonresident shareholder's share of distributed or undistributed income and of the amount that has been withheld.

(c) Partnerships are required to withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to subsection (a) of K.S.A. 79-32,110, and amendments thereto, from a nonresident partner's share of Kansas taxable income of the partnership, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the partnership shall make a return and pay over the withheld funds on or before the due date of the partnership's income tax return, including extensions. Taxes withheld in the name of the nonresident partner must be used as credit against taxes due at the time the nonresident files a return of tax or other applicable information return for the taxable year. The provisions of this subsection shall not apply to any publicly traded partnership, as defined under section 7704 of the federal internal revenue code.

(d) A partnership required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The partnership shall furnish to each nonresident shareholder a written statement as required by K.S.A. 79-3299, and amendments thereto, as proof of the amount of the nonresident shareholder's share of distributed or undistributed income that has been withheld.

(e) Limited liability companies are required to withhold tax at a rate equal to the maximum rate imposed on individuals pursuant to subsection (a) of K.S.A. 79-32,110, and amendments thereto, from a nonresident member's share of Kansas taxable income of the limited liability company, whether distributed or undistributed, and pay the withheld amount to the department in the manner prescribed by the department. For a taxable year beginning after 2002, the limited liability company shall make a return and pay over the withheld funds on or before the due date of the limited liabilities income tax return, including extensions. Taxes withheld in the name of the nonresident member must be used as credit against taxes due at the time the nonresident files a return of tax or other applicable information return for the taxable year.

(f) A limited liability company required to withhold taxes on distributed or undistributed income shall file a return with each payment of tax to the department, on forms prescribed by the secretary, disclosing such information as required by the secretary pursuant to subsection (i). The limited liability company shall furnish to each nonresident member a written statement as required by K.S.A. 79-3299, and amendments thereto, as proof of the amount of the nonresident member's share of distributed or undistributed income that has been withheld.

(g) If a nonresident shareholder, partner or member provides the S corporation, partnership or limited liability company with a statement that the shareholder or partner is an organization exempt from income taxes under section 501(a) of the federal internal revenue code, then the S corporation, partnership or limited liability company is not required to withhold with regard to that shareholder, partner or member. The statement must contain the shareholder's, partner's or member's name, federal identification number, internal revenue code section exemption number, and a copy of the internal revenue service exemption letter.

(h) (1) For purposes of computing the penalty under K.S.A. 79-32,107, and amendments thereto, the amount withheld is deemed a payment of estimated tax, and an equal part of the amount is deemed paid on each estimated tax due date for the previous taxable year.

(2) If a nonresident shareholder, partner or member files an affidavit with the department in a form acceptable to the department by which such nonresident shareholder, partner or member agrees to be subject to the personal jurisdiction of the department in courts of this state for the purpose of determining and collecting any Kansas taxes, including estimated taxes, together with any related interest and penalties, then the S corporation, partnership or limited liability company is not required to withhold with regard to that shareholder, partner or member. The department may revoke an exemption granted by this subsection at any time it determines that the nonresident shareholder, partner or member is not abiding by its terms.

(i) The department is authorized to require such returns and other information as it considers appropriate to administer the provisions of this section, and to issue rulings and promulgate regulations as necessary or appropriate to implement this section.

(j) The director of taxation may allow a nonresident individual shareholder, partner or member to not file a Kansas income tax return if the nonresident individual shareholder's, partner's or member's only source of Kansas income was such nonresident shareholder's, partner's or member's share of the S corporation's, partnership's or limited liability company's income which was derived from or attributable to sources within this state, and the S corporation, partnership or limited liability company has remitted the amount required by subsections (a), (c) or (e) on behalf of such nonresident shareholder, partner or member. The amount remitted shall be retained in satisfaction of the Kansas income tax liability of the nonresident individual shareholder, partner or member.

(k) The provisions of this section shall be part of and supplemental to the Kansas withholding and declaration of estimated tax act.

(l) The provisions of this section shall be effective on and after July 1, 2003.

History: L. 2003, ch. 147, § 42; L. 2007, ch. 154, § 2; July 1.