

40-252d. Credit against premium tax for salaries paid to Kansas employees. (a) For tax years 2001 and thereafter, each company required to pay a tax on premiums under subsections A, C, D or F of K.S.A. 40-252, and amendments thereto, shall be allowed as a credit against such tax 15% of the salaries paid to Kansas employees. Before taking into account any other credit or offset against the tax on premiums imposed under K.S.A. 40-252, and amendments thereto, the credit allowed under this section may not reduce such tax by more than 1.125% of premiums taxable thereunder for tax years 2001 and thereafter, or 1% of premiums taxable thereunder for tax years 2001 and thereafter if such credit is calculated in accordance with the provisions of subsection (c).

(b) As used in this section, unless the context otherwise requires:

(1) "Affiliate" means an insurance company which, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with another insurance company. "Affiliate" also includes any company or business entity other than an insurance company which, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with an insurance company and which performs insurance company operations for an insurance company. For purposes of this definition, control exists if any company or business entity, directly or indirectly, owns, holds with the power to vote or holds proxies representing all the voting stock or other voting securities of any other company or business entity.

(2) "Insurance company" or "company" means any entity subject to a tax on premiums under subsections A, C, D or F of K.S.A. 40-252, and amendments thereto, including the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney. For the purpose of this section, a reciprocal and its attorney-in-fact will be considered a single entity.

(3) "Insurance company operations" means one or more or any combination of the following functions or services performed in connection with the development, sale and administration of products giving rise to receipts subject to a tax on premiums under subsection A, C, D or F of K.S.A. 40-252, and amendments thereto: Actuarial, medical, legal, investments, accounting, auditing, underwriting, policy issuance, information, policyholder services, premium collection, claims, advertising and publications, public relations, human resources, marketing, sales office staff, training of sales and service personnel, and clerical, managerial and other support for any such functions or services.

(4) "Kansas employees" means persons who are employed in Kansas and who are common law employees of an insurance company or its affiliate. "Kansas employees" does not include independent contractors or any person to the extent such person's compensation is based on commissions.

(5) "Salaries" means gross compensation paid to Kansas employees as reported to the State of Kansas for income tax purposes for the calendar year for which a tax on premiums is imposed under K.S.A. 40-252, and amendments thereto, but only to the extent compensation is paid for insurance company operations performed in Kansas for an insurance company or its insurance company affiliates subject to the tax on premiums under subsection A, C, D or F of K.S.A. 40-252, and amendments thereto. "Salaries" does not include compensation based on commissions.

(c) For an insurance company having affiliates:

(1) Salaries paid by a noninsurance company affiliate shall be allocated among insurance company affiliates pursuant to the agreement between or among the insurance company and its affiliates.

(2) The gross amount of all premiums of an insurance company subject to tax under subsection A, C, D or F of K.S.A. 40-252, and amendments thereto and those of its insurance company affiliates subject to such tax may be aggregated. In addition, all salaries paid to Kansas employees may be aggregated. Subject to the limitation on the salary credit set forth in subsection (a) of this section, the total allowable salary credit may be determined as if all the aggregated premiums were received and all the aggregated salaries were paid by one insurance company. Once the total allowable salary credit is determined for all insurance company affiliates, the total credit may be allocated among the insurance company and its insurance company affiliates at the discretion of the insurance company on a per insurance company basis, subject to the limitation on the salary credit as set forth in subsection (a) of this section.

(d) The computation of salaries, the allowable salary credit and the allocation of the credit among insurance company affiliates shall be made on forms supplied by the commissioner of insurance.

(e) For purposes of calculating any tax due under K.S.A. 40-253, and amendments thereto, from a taxpayer not organized under the laws of this state, the credit allowed by this section shall be treated as a tax paid under K.S.A. 40-252, and amendments thereto.

History: L. 1997, ch. 175, § 7; L. 2001, ch. 205, § 1; July 1.