

HOUSE BILL No. 2105

By Committee on Taxation

1-21

1 AN ACT concerning income taxation; relating to withholding taxes;
2 establishing withholding requirements for certain employees who work
3 in multiple states; determination of employer penalties.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) As used in this section:

7 (1) "Certain public figures" means persons of prominence who
8 perform services for wages or other remuneration on a per-event basis,
9 provided that the wages or other remuneration are paid to such person for
10 services provided at a discrete event, in the nature of a speech, public
11 appearance or similar event.

12 (2) "Employee" means the same as defined in K.S.A. 79-3295, and
13 amendments thereto, except that the term "employee" does not include a
14 professional athlete, professional entertainer, qualified production
15 employee or certain public figures.

16 (3) "Employer" means the same as defined in K.S.A. 79-3295, and
17 amendments thereto.

18 (4) "Professional athlete" means a person who performs services in a
19 professional athletic event, provided that the wages or other remuneration
20 are paid to such person for performing services in the person's capacity as
21 a professional athlete.

22 (5) "Professional entertainer" means a person of prominence who
23 performs services in the professional performing arts for wages or other
24 remuneration on a per-event basis, provided that the wages or other
25 remuneration are paid to such person for performing services in the
26 person's capacity as a professional entertainer.

27 (6) "Qualified production employee" means a person who performs
28 production services of any nature directly in connection with a qualified,
29 certified or approved film, television or other commercial video
30 production for wages or other remuneration, provided that the wages or
31 other remuneration paid to such person are qualified production costs or
32 expenditures under such qualified, certified or approved film incentive
33 program and that such wages or other remuneration must be subject to
34 withholding under such film incentive program as a condition to treating
35 such wages or other remuneration as a qualified production cost or
36 expenditure.

1 (7) "Time and attendance system" means a system in which:

2 (A) The employee is required on a contemporaneous basis to record
3 such employee's work location for every day worked outside of the state in
4 which the employee's employment duties are primarily performed; and

5 (B) the system is designed to allow the employer to allocate the
6 employee's wages or other remuneration for income tax purposes among
7 all states in which the employee performs employment duties for such
8 employer.

9 (8) "Wages or other remuneration" includes wages and payment other
10 than wages as such terms are defined in K.S.A. 79-3295, and amendments
11 thereto.

12 (b) No part of the wages or other remuneration earned by the
13 employee who performs employment duties in more than one state shall be
14 subject to income tax in any state other than:

15 (1) The state of the employee's residence; or

16 (2) the state that the employee is present and performing employment
17 duties for more than 30 days during the calendar year that the wages or
18 other remuneration is earned and the nonresident employee's state of
19 residence:

20 (A) Provides a substantially similar exclusion;

21 (B) does not impose an individual income tax; or

22 (C) the employee's income is exempt from taxation by the state of
23 Kansas pursuant to the United States constitution or other federal law.

24 (c) Wages or other remuneration earned in any calendar year shall not
25 be subject to Kansas income tax withholding and reporting requirements
26 unless the employee is subject to income tax in Kansas pursuant to
27 subsection (b). Income tax withholding and reporting requirements under
28 subsection (b)(2) shall apply to wages or other remuneration earned as of
29 the commencement date of employment duties in the state during the
30 calendar year.

31 (d) Except as provided in subsection (b), an employee is considered
32 present and performing employment duties within a state for a day if the
33 employee performs more of the employee's employment duties within such
34 state than in any other state during a day.

35 (e) If an employee performs employment duties in Kansas and in only
36 one nonresident state during one day, such employee shall be considered to
37 have performed more of the employee's employment duties in the
38 nonresident state than in Kansas on such day.

39 (f) For purposes of this section, the portion of the day during which
40 the employee is in transit shall not be considered in determining the
41 location of an employee's performance of employment duties.

42 (g) For purposes of determining penalties related to an employer's
43 income tax withholding and reporting requirements:

1 (1) An employer may rely on an employee's annual determination of
2 the time expected to be spent by such employee in the states in which the
3 employee will perform duties absent:

4 (A) The employer's actual knowledge of fraud by the employee in
5 making the determination; or

6 (B) collusion between the employer and the employee to evade the
7 tax;

8 (2) except as provided in paragraph (3), if records are maintained by
9 an employer in the regular course of business that record the location of an
10 employee, such records shall not preclude an employer's ability to rely on
11 an employee's determination under paragraph (1); and

12 (3) notwithstanding paragraph (2), if an employer, at its sole
13 discretion, maintains a time and attendance system that tracks where the
14 employee performs duties on a daily basis, data from the time and
15 attendance system shall be used instead of the employee's determination
16 under paragraph (1).

17 (h) This section shall be a part of and supplemental to the Kansas
18 withholding and declaration of estimated tax act.

19 Sec. 2. This act shall take effect and be in force from and after its
20 publication in the statute book.