Substitute for SENATE BILL No. 126

By Committee on Utilities

2-24

AN ACT concerning income taxation; relating to certain public utilities; exemption from income taxation; income tax expenses, exclusion from retail rates; amending K.S.A. 79-32,113 and repealing the existing section.

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

New Section 1. (a) If a public utility as defined in K.S.A. 66-104, and amendments thereto, includes expenses related to income taxes as a component of its retail rates, the utility shall track any overcollection or undercollection of income tax expense if the income taxes assessed on such utility are adjusted as a result of any changes in state or federal law.

(b) When any change in state or federal law either increases or decreases the amount of incomes taxes assessed on a utility and results in an overcollection or undercollection of income tax expenses that is equal to or exceeds 0.25% of such utility's base revenue level approved by the state corporation commission in the utility's most recent general rate proceeding, such utility shall file an application for new retail rates reflecting the adjusted income taxation rates with the commission within 30 days of such change in state or federal law. The utility shall either refund the tracked overcollected amounts to, or recover the tracked undercollected amounts from, such utility's retail customers in a manner approved by the commission.

(c) A filing required pursuant to subsection (b) shall not:

(1) Require the utility to file a full general rate proceeding;

(2) require the utility to update any component of such utility's retail rates other than the income tax expense component; or

(3) constitute a violation of any existing rate moratorium agreement if such filing only updates the income tax expense component of a utility's rates.

(d) The state corporation commission shall issue a order addressing the application filed under subsection (b):

(1) That gives due consideration to the common interests of the public utility and its customers, including, but not limited to, use of a two-year implementation of current period rate changes to maintain the credit quality of the utility by ensuring that any such change in retail rates will not cause the utility's credit metrics that are traditionally considered by the
credit rating agencies to deteriorate to a level that could impair the utility's current credit rating. To the extent a retail rate change to address adjusted income taxes is implemented over a period of time, as provided in this paragraph, the utility shall: (A) Track and defer any overcollection or undercollection of income tax expenses as a regulatory liability or asset, as appropriate, that will accrue interest at the utility's cost of short-term debt; and (B) refund or collect the balance of such amounts in its next full general rate proceeding; and

(2) within 120 days of the date of such filing.

(e) Excess accumulated deferred income tax balances resulting from income taxes adjusted due to changes in state or federal law shall be maintained on the public utility's books of account until new retail rates from such utility's next full general rate proceeding after the altered income tax rates take effect. Such balances shall be reflected in retail rates at such time. Excess accumulated deferred income tax balances resulting from changes in state law effective January 2021, shall be authorized by the state corporation commission to be amortized over 30 years in retail rates for such utility. Excess accumulated deferred income tax balances resulting from any other changes in state or federal law shall be authorized by the commission to be amortized in retail rates for such utility in a manner consistent with requirements of state and federal tax law and implementing regulations and in a manner that will not impair the utility's credit rating.

(f) The provisions of this section shall not apply to any:

(1) Municipal electric utility or natural gas utility; or

(2) utility that is a cooperative as defined in K.S.A. 66-104d, and amendments thereto, or owned by one or more such cooperatives.

(g) For the purposes of this section, "overcollection or undercollection of income tax expense" means the portion of utility revenue representing the difference between the cost of service as approved by the state corporation commission in the utility's most recent base rate proceeding and the cost of service that would have resulted had the provision for state or federal income taxes been based upon the adjusted corporate income tax rate.

Sec. 2. K.S.A. 79-32,113 is hereby amended to read as follows: 79-32,113. (a) A person or organization exempt from federal income taxation under the provisions of the federal internal revenue code shall also be exempt from the tax imposed by this act in each year in which such person or organization satisfies the requirements of the federal internal revenue code for exemption from federal income taxation. If the exemption applicable to any person or organization under the provisions of the federal internal revenue code is limited or qualified in any manner, the exemption from taxes imposed by this article shall be limited or qualified in a similar
manner.

(b) Notwithstanding the provisions of subsection (a) of this section, the unrelated business taxable income, as computed under the provisions of the federal internal revenue code, of any person or organization otherwise exempt from the tax imposed by this act and subject to the tax imposed on unrelated business income by the federal internal revenue code shall be subject to the tax which would have been imposed by this act but for the provisions of subsection (a) of this section.

(c) In addition to the persons or organizations exempt from federal income taxation under the provision of the federal internal revenue code, there shall also be exempt from the tax imposed by this act, insurance companies, banks, trust companies, savings and loan associations, credit unions and any other organizations, entities or persons specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(d) Every electric and natural gas public utility as defined in K.S.A. 66-104, and amendments thereto, not including any such utility that is a cooperative as defined in K.S.A. 66-104d, and amendments thereto, or owned by one or more such cooperatives, that is subject to rate regulation by the state corporation commission shall: (1) Be exempt from the tax imposed by the Kansas income tax act pursuant to K.S.A. 79-32,110, and amendments thereto; and (2) not collect, as a component of such utility's retail rates, Kansas income tax expenses.

Sec. 3. K.S.A. 79-32,113 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.