

**Substitute for SENATE BILL No. 126**

By Committee on Utilities

2-24

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

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

7 New Section 1. (a) If a public utility as defined in K.S.A. 66-104, and  
8 amendments thereto, includes expenses related to income taxes as a  
9 component of its retail rates, the utility shall track *{and defer into a*  
10 *regulatory asset or liability, as appropriate,}* any overcollection or  
11 undercollection of income tax expense if the income ~~taxes~~ *{tax rates}*  
12 assessed on such utility are adjusted as a result of any changes in state or  
13 federal law.

14 (b) When any change in state or federal law either increases or  
15 decreases the ~~amount of incomes taxes~~ *{income tax rates}* assessed on a  
16 utility and results in an overcollection or undercollection of income tax  
17 expenses that is equal to or exceeds 0.25% of such utility's base revenue  
18 level approved by the state corporation commission in the utility's most  
19 recent general rate proceeding, such utility shall file an application for new  
20 retail rates reflecting the adjusted income taxation rates with the  
21 commission within ~~30~~ *{60}* days of *{the enactment of}* such change in  
22 state or federal law. The utility shall either refund the tracked overcollected  
23 amounts to, or recover the tracked undercollected amounts from, such  
24 utility's retail customers in a manner approved by the commission.

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

- 26 (1) Require the utility to file a full general rate proceeding;  
27 (2) require the utility to update any component of such utility's retail  
28 rates other than the income tax expense component; or  
29 (3) constitute a violation of any existing rate moratorium agreement if  
30 such filing only updates the income tax expense component of a utility's  
31 rates.

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

- 34 (1) That, *if requested by the utility,* gives due consideration to the  
35 common interests of the public utility and its customers, including, but not  
36 limited to, use of a two-year implementation of current period rate changes

1 to maintain the credit quality of the utility by ensuring that any such  
2 change in retail rates will not cause the utility's credit metrics that are  
3 traditionally considered by the credit rating agencies to deteriorate to a  
4 level that could impair the utility's current credit rating. To the extent a  
5 retail rate change to address adjusted income taxes is implemented over a  
6 period of time, as provided in this paragraph, the utility shall: (A) Track  
7 and defer any overcollection or undercollection of income tax expenses as  
8 a regulatory liability or asset, as appropriate, that will accrue interest at the  
9 utility's ~~cost of short-term debt~~ ***{weighted average cost of capital, as***  
10 ***determined by the commission in the utility's most recent general rate***  
11 ***proceeding***; and (B) refund or collect the balance of such amounts in its  
12 next full general rate proceeding; and

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

14 (e) ***{If a utility has a full general rate proceeding pending before***  
15 ***the commission, or has provided notice to the commission of its intent to***  
16 ***file a full general rate proceeding application, at the time any adjusted***  
17 ***income tax rates become effective, upon a showing by the utility that the***  
18 ***public interest would be promoted, the commission may issue an order***  
19 ***finding that such adjusted state or federal income tax rates should not be***  
20 ***reflected in such utility's retail rates until the utility's new retail rates***  
21 ***become effective following such utility's full general rate proceeding.***

22 (f) ***{Excess accumulated deferred income tax balances resulting from***  
23 ***income taxes adjusted due to changes in state or federal law shall be***  
24 ***maintained {remain unamortized}*** on the public utility's books of account  
25 until new retail rates from such utility's next full general rate proceeding  
26 after the ~~altered~~ ***{adjusted}*** income tax rates take effect. Such balances  
27 shall be ***{amortized and}*** reflected in retail rates at such time. ***{If requested***  
28 ***by the utility,}*** excess accumulated deferred income tax balances resulting  
29 from changes in state law effective January 2021, shall be ~~authorized by~~  
30 ~~the state corporation commission to be~~ amortized over ***{a period of not***  
31 ***less than}*** 30 years in retail rates for such utility ***{by order of the***  
32 ***commission}***. Excess accumulated deferred income tax balances resulting  
33 from any other changes in state or federal law shall be ~~authorized by the~~  
34 ~~commission to be~~ amortized in retail rates for such utility ***{by order of the***  
35 ***commission}*** in a manner consistent with requirements of state and federal  
36 tax law and implementing regulations and in a manner that will not impair  
37 the utility's credit rating.

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

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

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

42 (g) For the purposes of this section, "overcollection or  
43 undercollection of income tax expense" means the portion of utility

1 revenue representing the difference between the cost of service as  
2 approved by the state corporation commission in the utility's most recent  
3 base rate proceeding and the cost of service that would have resulted had  
4 the provision for state or federal income taxes been based upon the  
5 adjusted corporate income tax rate. ***{"Overcollection or undercollection  
6 of income tax expense" does not include the effects of accumulated  
7 deferred income taxes or excess accumulated deferred income taxes.}***

8 Sec. 2. K.S.A. 79-32,113 is hereby amended to read as follows: 79-  
9 32,113. (a) A person or organization exempt from federal income taxation  
10 under the provisions of the federal internal revenue code shall also be  
11 exempt from the tax imposed by this act in each year in which such person  
12 or organization satisfies the requirements of the federal internal revenue  
13 code for exemption from federal income taxation. If the exemption  
14 applicable to any person or organization under the provisions of the federal  
15 internal revenue code is limited or qualified in any manner, the exemption  
16 from taxes imposed by this article shall be limited or qualified in a similar  
17 manner.

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

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

31 (d) ***{Notwithstanding the provisions of K.S.A. 79-32,110, and  
32 amendments thereto, effective for tax years ending on or after December  
33 31, 2021,} every electric and natural gas public utility as defined in K.S.A.  
34 66-104, and amendments thereto, not including any such utility that is a  
35 cooperative as defined in K.S.A. 66-104d, and amendments thereto, or  
36 owned by one or more such cooperatives, that is subject to rate regulation  
37 by the state corporation commission {and any utility that is a cooperative  
38 as defined in K.S.A. 66-104d, and amendments thereto, or owned by one  
39 or more such cooperatives} shall: (1) Be exempt from the tax imposed by  
40 the Kansas income tax act pursuant to K.S.A. 79-32,110, and amendments  
41 thereto; {2) not be permitted to be included in a consolidated or unitary  
42 combined return;} and ~~(2) {3) except as provided in section 1, and  
43 amendments thereto,}~~ not collect, as a component of such utility's retail***

1 *rates, Kansas income tax expenses.*

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

3       Sec. 4. This act shall take effect and be in force from and after its

4 publication in the statute book.