

2021 Senate Bill 15
Amendments to K.S.A. 79-1109
Questions and Answers

Updated April 17, 2023

During the 2021 Legislative Session Senate Bill 15 was passed and signed into law. Section 10 of the Bill amended K.S.A. 79-1109 to add a new deduction from net income for privilege tax purposes. The deduction is available for all tax years commencing **after** December 31, 2022.

The new deduction is available to national banking associations, state banks, trust companies, and savings and loan associations, and will be claimed on form K-130. As set forth in section (c) of the statute, the deduction is for:

. . . net interest income received from qualified agricultural real estate loans attributed to Kansas and the net interest income received from single family residence loans attributed to Kansas to the extent such interest is included in the Kansas taxable income of a corporation. . . .

FREQUENTLY ASKED QUESTIONS

1. How are the terms used in K.S.A. 79-1109 defined?

Subsection (a) of K.S.A. 79-1109 defines the term “net income”. This subsection provides:

(a) As used in this act, "net income" means the Kansas taxable income of corporations as defined in K.S.A. 79-32,138, and amendments thereto, determined without regard to the provisions of K.S.A. 79-32,139, and amendments thereto, and the provisions of K.S.A. 79-32,117(c)(xiv), and amendments thereto, plus income received from obligations or securities of the United States or any authority, commission or instrumentality of the United States and its possessions to the extent not included in Kansas taxable income of a corporation and income received from obligations of this state or a political subdivision of this state that is exempt from income tax under the laws of this state, less dividends received from stock issued by Kansas venture capital, inc. to the extent such dividends are included in the Kansas taxable income of a corporation, interest paid on time deposits or borrowed money and dividends paid on withdrawable shares of savings and loan associations to the extent not deducted in arriving at Kansas taxable income of a corporation.

Subsections (c)(1), (2), (3), (4), and (5) of K.S.A. 79-1109 define the terms “interest”, “qualified agriculture real estate loans”, “single family residence”, “net interest income received from qualified agricultural real estate loans attributable to Kansas”, and “net interest income received from single family residence loans attributable to Kansas”. These subsections provide:

(1) “Interest” means interest on indebtedness attributed to Kansas and incurred in the ordinary course of the active conduct of any business and interest on indebtedness incurred that is secured by a single family residence;

(2) “qualified agricultural real estate loans” means loans made on real property that is substantially used for the production of one or more agricultural products and that:

(A) Have maturities of not less than five years and not more than 40 years;

(B) are secured by a first lien interest in real estate, except that the loans may be secured by a second lien interest if the institution also holds the first lien on the property; and

(C) have an outstanding loan balance when made that is less than 85% of the appraised value of the real estate, except that a loan for which private mortgage insurance is obtained may exceed 85% of the appraised value of the real estate to the extent the loan amount in excess of 85% is covered by such insurance;

(3) “single family residence” means a residence that:

(A) Is the principal residence of its occupant;

(B) is located in Kansas, in a rural area as defined by the United States department of agriculture that is not within a metropolitan statistical area and has a population of 2,500 or less as determined by the most recent census for which data is available; and

(C) is purchased or improved with the proceeds of the loan;

(4) “net interest income received from qualified agricultural real estate loans attributed to Kansas” means the product of the ratio of the interest income earned on qualified agricultural real estate loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company or savings and loan association without regard to this deduction; and

(5) “net interest income received from single family residence loans attributed to Kansas” means the product of the ratio of the interest income earned on single family residence loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company or savings and loan association without regard to this deduction.

2. Does the interest earned on an agricultural real estate loan to a Kansas non-resident or on a loan to a Kansas resident with agricultural real estate outside of Kansas qualify for the qualified agricultural real estate loan deduction?

Yes. K.S.A. 79-1109(c)(4) requires that the agricultural loan be “attributed to Kansas” and is one of five factors included in the legislation under K.S.A. 79-1109(c):

(c) For all taxable years commencing after December 31, 2022, national banking associations, state banks, trust companies and savings and loan associations shall be allowed as a deduction from net income, as defined in subsection (a), the net interest income received from qualified agricultural real estate loans attributed to Kansas and the net interest income received from single family residence loans attributed to Kansas to the extent such interest is included in the Kansas taxable income of a corporation. As used in this subsection:

(4) "net interest income received from qualified agricultural real estate loans attributed to Kansas" means the product of the ratio of the interest income earned on qualified agricultural real estate loans over total interest income earned, in relation to the net income of the national banking association, state bank, trust company or savings and loan association without regard to this deduction;

The statutory phrase "from qualified agricultural real estate loans attributed to Kansas" means the qualified agricultural real estate loans must either be: (1) for agricultural real estate located in Kansas, regardless of whether the borrower is a resident of Kansas or a resident of another state; or (2) made to a Kansas resident for agricultural real estate located outside of Kansas.

3. Is the deduction only available for interest earned on loans originated after December 31, 2022, or does interest earned on loans originated prior to December 31, 2022, also qualify for the deduction?

The deduction is available for interest earned on loans that qualify as agricultural real estate loans or rural residence loans whether they originated before or after December 31, 2022. However, the deduction is only available for interest earned after December 31, 2022. Interest earned prior to December 31, 2022, on loans that qualify as agricultural real estate loans or rural residence loans does not qualify for the deduction.

4. How will the national banking association, state bank, trust company or savings and loan know if a single-family residence is located within a community of 2,500 or less?

The term "single family residence" is defined in K.S.A. 79-1109(c)(3). The statutory subsection provides:

- (3) "single family residence" means a residence that:
 - (A) Is the principal residence of its occupant;
 - (B) is located in Kansas, in a rural area as defined by the United States department of agriculture that is not within a metropolitan statistical area and has a population of 2,500 or less as determined by the most recent census for which data is available; and
 - (C) is purchased or improved with the proceeds of the loan;

The definition is patterned after Federal law which provides the residence must be in a non-Metropolitan Statistical Area (MSA) in a rural area with a population less than 2,500. Under Federal law, "area" could be a community, a township, a city, a county, or other contained area.