

**79-32,137. Share of a nonresident estate, trust or beneficiary in income from sources within Kansas.** (a) The share of a nonresident estate or trust under K.S.A. 79-32,136(a) and the share of a nonresident beneficiary of any estate or trust under K.S.A. 79-32,109(h)(v) in estate or trust income, gain, loss, deduction, and credit from sources within Kansas shall be determined as follows:

(i) There shall be determined the items of income, gain, loss, deduction, and credit derived from sources within Kansas which enter into the definition of federal distributable net income of the estate or trust for the taxable year (including such items from another estate or trust of which the first estate or trust is a beneficiary). Such determination of source shall be made in accordance with the applicable rules of K.S.A. 79-32,109(h) as in the case of a nonresident individual.

(ii) There shall be added or subtracted, as the case may be, the modifications described in K.S.A. 79-32,117(b), (c), (d), (e), 79-32,120(b) and (c), to the extent relating to items of income, gain, loss, deduction, and credit derived from sources within Kansas, which enter into the definition of federal distributable net income (including such items from another estate or trust of which the first estate or trust is a beneficiary). No modification shall be made under this paragraph (ii) which has the effect of duplicating an item already reflected in the definition of federal distributable net income.

(iii) (A) The sum of the amounts determined under subsections (a) (i) and (a) (ii) of this section shall be allocated among the estate or trust and its beneficiaries (including, solely for the purpose of this allocation, resident and charitable beneficiaries) in proportion to their respective shares of the sum of federal distributable net income of the estate or trust and the amount paid or required to be paid to a charitable organization to the extent such amount is attributable to income for the current year.

(B) The amounts so allocated shall have the same character under this section as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if realized directly from the source from which realized by the estate or trust, or incurred in the same manner as incurred by the estate or trust.

(b) (i) If the estate or trust has no federal distributable net income for the taxable year, the share of each beneficiary (including, solely for the purpose of this allocation, resident beneficiaries) in the net amount, determined under subsections (a)(i) and (a)(ii) of this section, shall be in proportion to his or her share of the estate or trust income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the estate or trust.

(ii) The director may, by regulation, establish such other method or methods of determining the respective shares of the beneficiaries and of the estate or trust in its income derived from sources within Kansas and in the modifications related thereto as may be appropriate and equitable. Such method may be used by the fiduciary in his or her discretion whenever the allocation of such respective shares under subsections (a) or (b)(i) of this section would result in an inequity which is substantial both in amount and in relation to the total amount of the amount of the modifications referred to in subsection (a)(ii) of this section.

(c) The fiduciary of a resident estate or trust shall withhold and deduct from amounts distributed or distributable to each nonresident beneficiary an amount equal to two and one-half percent (2 1/2%) of that portion of the Kansas nonresident adjusted gross income of such nonresident beneficiary which is derived from such estate or trust. Such fiduciary shall pay to the director the amounts so withheld and deducted concurrently with the filing of the Kansas income tax return of the estate or trust and shall furnish or mail to the last known address of each such nonresident beneficiary two copies of a statement on a form prescribed by the director showing the amount so withheld and deducted from the amounts distributed or distributable to such nonresident beneficiary and such other information as may be prescribed by the director. The amount withheld and deducted shall be allowed as a credit against the income tax otherwise imposed on such nonresident beneficiary under this act, and if the amount withheld and deducted exceeds the income tax liability of such nonresident beneficiary, any excess shall be applied to any other tax owed the state of Kansas by such nonresident beneficiary (including fines, penalties and interest, if any) and the balance of such excess, if any, refunded to such nonresident beneficiary as provided in K.S.A. 79-32,105(c).

**History:** L. 1967, ch. 497, § 30; L. 1978, ch. 407, § 14; July 1.