

## HOUSE BILL No. 2110

By Committee on Taxation

1-19

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1 AN ACT concerning income taxation; relating to apportionment of  
2 business income; allowing sales factor for certain taxpayers; election;  
3 requiring the secretary of revenue to report to the legislature; amending  
4 K.S.A. 79-3271 and 79-3279 and repealing the existing sections.  
5

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

7 Section 1. K.S.A. 79-3271 is hereby amended to read as follows: 79-  
8 3271. As used in this act, unless the context otherwise requires:

9 (a) For tax years commencing prior to January 1, 2008, "business  
10 income" means income arising from transactions and activity in the regular  
11 course of the taxpayer's trade or business and includes income from  
12 tangible and intangible property if the acquisition, management, and  
13 disposition of the property constitute integral parts of the taxpayer's  
14 regular trade or business operations, except that a taxpayer may elect that  
15 all income constitutes business income. For tax years commencing after  
16 December 31, 2007, "business income" means: (1) Income arising from  
17 transactions and activity in the regular course of the taxpayer's trade or  
18 business; (2) income arising from transactions and activity involving  
19 tangible and intangible property or assets used in the operation of the  
20 taxpayer's trade or business; or (3) income of the taxpayer that may be  
21 apportioned to this state under the provisions of the Constitution of the  
22 United States and laws thereof, except that a taxpayer may elect that all  
23 income constitutes business income. Any election made under this  
24 subsection shall be effective and irrevocable for the tax year in which the  
25 election is made and the following nine tax years and shall be binding on  
26 all members of a unitary group of corporations.

27 (b) "Commercial domicile" means the principal place from which the  
28 trade or business of the taxpayer is directed or managed.

29 (c) "Compensation" means wages, salaries, commissions and any  
30 other form of remuneration paid to employees for personal services.

31 (d) "Financial organization" means any bank, trust company, savings  
32 bank, industrial bank, land bank, safe deposit company, private banker,  
33 savings and loan association, credit union, cooperative bank, or any type  
34 of insurance company, but such term shall not be deemed to include any  
35 business entity, other than those hereinbefore enumerated, whose primary  
36 business activity is making consumer loans or purchasing retail installment

1 contracts from one or more sellers.

2 (e) "Nonbusiness income" means all income other than business  
3 income.

4 (f) "Public utility" means any business entity which owns or operates  
5 for public use any plant, equipment, property, franchise, or license for the  
6 transmission of communications, transportation of goods or persons, or the  
7 production, storage, transmission, sale, delivery, or furnishing of  
8 electricity, water, steam, oil, oil products or gas.

9 (g) "Original return" means the first return filed to report the income  
10 of a taxpayer for a taxable year or period, irrespective of whether such  
11 return is filed on a single entity basis or a combined basis.

12 (h) "Sales" means, except as otherwise provided in K.S.A. 79-3285,  
13 and amendments thereto, all gross receipts of the taxpayer not allocated  
14 under K.S.A. 79-3274 through 79-3278, and amendments thereto.

15 (i) "State" means any state of the United States, the District of  
16 Columbia, the Commonwealth of Puerto Rico, any territory or possession  
17 of the United States, and any foreign country or political subdivision  
18 thereof.

19 (j) "Telecommunications company" means any business entity or  
20 unitary group of entities whose primary business activity is the  
21 transmission of communications in the form of voice, data, signals or  
22 facsimile communications by wire or fiber optic cable.

23 (k) "Distressed area taxpayer" means a corporation which: (1) Is  
24 located in a county which has a population of not more than 45,000  
25 persons and which, as certified by the department of commerce, has  
26 sustained an adverse economic impact due to the closure of a state hospital  
27 in such county pursuant to the recommendations of the hospital closure  
28 commission; and (2) which has a total annual payroll of \$20,000,000 or  
29 more for employees employed within such county.

30 (l) For the purposes of this subsection and ~~subsection (b)(5) of K.S.A.~~  
31 79-3279(b)(5), and amendments thereto, the following terms are defined:

32 (1) "Administration services" include clerical, fund or shareholder  
33 accounting, participant record keeping, transfer agency, bookkeeping, data  
34 processing, custodial, internal auditing, legal and tax services performed  
35 for an investment company;

36 (2) "distribution services" include the services of advertising,  
37 servicing, marketing, underwriting or selling shares of an investment  
38 company, but, in the case of advertising, servicing or marketing shares,  
39 only where such service is performed by a person who is, or in the case of  
40 a closed end company, was, either engaged in the services of underwriting  
41 or selling investment company shares or affiliated with a person who is  
42 engaged in the service of underwriting or selling investment company  
43 shares. In the case of an open end company, such service of underwriting

1 or selling shares must be performed pursuant to a contract entered into  
2 pursuant to 15 U.S.C. § 80a-15(b), as in effect on the effective date of this  
3 act;

4 (3) "investment company", means any person registered under the  
5 federal Investment Company Act of 1940, as in effect on the effective date  
6 of this act, or a company which would be required to register as an  
7 investment company under such act except that such person is exempt to  
8 such registration pursuant to § 80a-3(c)(1) of such act;

9 (4) "investment funds service corporation" includes any corporation  
10 or S corporation headquartered in and doing business in this state which  
11 derives more than 50% of its gross income from the provision of  
12 management, distribution or administration services to or on behalf of an  
13 investment company or from trustees, sponsors and participants of  
14 employee benefit plans which have accounts in an investment company;

15 (5) "management services" include the rendering of investment  
16 advice to an investment company making determinations as to when sales  
17 and purchases of securities are to be made on behalf of the investment  
18 company, or the selling or purchasing of securities constituting assets of an  
19 investment company, and related activities, but only where such activity or  
20 activities are performed:

21 (A) Pursuant to a contract with the investment company entered into  
22 pursuant to 15 U.S.C. § 80a-15(a), in effect on the effective date of this  
23 act; or

24 (B) for a person that has entered into such contract with the  
25 investment company;

26 (6) "qualifying business income" is business income derived from the  
27 provision of management, distribution or administration services to or on  
28 behalf of an investment company or from trustees, sponsors and  
29 participants of employee benefit plans which have accounts in an  
30 investment company; and

31 (7) "residence" is the fund shareholder's primary residence address.

32 (m) *As used in this subsection and K.S.A. 79-3279(b)(7), and*  
33 *amendments thereto:*

34 (1) *"Agricultural activities" means all commercial enterprises*  
35 *identified under the following North American industry classification*  
36 *system (NAICS) codes:*

37 (A) *423820, farm and garden machinery and equipment merchant*  
38 *wholesalers;*

39 (B) *4245, farm product raw material merchant wholesalers;*

40 (C) *424910, farm supplies merchant wholesalers;*

41 (D) *493130, farm product warehousing and storage; or*

42 (E) *112210, hog and pig farming;*

43 (2) *"manufacturing" means all commercial enterprises identified*

1 under the North American industry classification system (NAICS) sectors  
2 31 through 33;

3 (3) "production of electricity" means all commercial enterprises  
4 identified under the North American industry classification system  
5 (NAICS) industry codes 221114 and 221115;

6 (4) "storage of electricity" means storing electric energy for a period  
7 of time using commercially available technology that is capable of storing  
8 electric energy by chemical, thermal, mechanical or other means and then  
9 delivering energy after storage;

10 (5) other scientific and technical consulting services for a biofuel  
11 facility identified under the North American industry classification system  
12 (NAICS) industry code 541690;

13 (6) petroleum and petroleum products merchant wholesalers  
14 identified under the North American industry classification system  
15 (NAICS) industry code 424720;

16 (7) paper and paper product merchant wholesalers identified under  
17 the North American industry classification system (NAICS) industry code  
18 4241; and

19 (8) wireless telecommunications carriers, except satellite, identified  
20 under the North American industry classification system (NAICS) industry  
21 code 517112.

22 Sec. 2. K.S.A. 79-3279 is hereby amended to read as follows: 79-  
23 3279. (a) All business income of railroads and interstate motor carriers of  
24 persons or property for-hire shall be apportioned to this state by  
25 multiplying the business income by a fraction, in the case of railroads, the  
26 numerator of which is the freight car miles in this state and the  
27 denominator of which is the freight car miles everywhere, and, in the case  
28 of interstate motor carriers, the numerator of which is the total number of  
29 miles operated in this state and the denominator of which is the total  
30 number of miles operated everywhere.

31 (b) All business income of any other taxpayer shall be apportioned to  
32 this state by one of the following methods:

33 (1) By multiplying the business income by a fraction, the numerator  
34 of which is the property factor plus the payroll factor plus the sales factor,  
35 and the denominator of which is three; or

36 (2) at the election of a qualifying taxpayer, by multiplying the  
37 business income by a fraction, the numerator of which is the property  
38 factor plus the sales factor, and the denominator of which is two.

39 (A) For purposes of this subsection (b)(2), a qualifying taxpayer is  
40 any taxpayer whose payroll factor for a taxable year exceeds 200% of the  
41 average of the property factor and the sales factor. Whenever two or more  
42 corporations are engaged in a unitary business and required to file a  
43 combined report, the fraction comparison provided by this subsection (b)

1 (2) shall be calculated by using the payroll factor, property factor and sales  
2 factor of the combined group of unitary corporations.

3 (B) An election under this subsection (b)(2) shall be made by  
4 including a statement with the original tax return indicating that the  
5 taxpayer elects to apply the apportionment method under this subsection  
6 (b)(2). The election shall be effective and irrevocable for the taxable year  
7 of the election and the following nine taxable years. The election shall be  
8 binding on all members of a unitary group of corporations.  
9 Notwithstanding the ~~above provisions of this paragraph~~, the secretary of  
10 revenue may upon the request of the taxpayer, grant permission to  
11 terminate the election under this subsection (b)(2) prior to expiration of the  
12 ~~ten-year~~ 10-year period.

13 (3) At the election of a qualifying telecommunications company, by  
14 multiplying the business income by a fraction, the numerator of which is  
15 the information carrying capacity of wire and fiber optic cable available  
16 for use in this state, and the denominator of which is the information  
17 carrying capacity of wire and fiber optic cable available for use  
18 everywhere during the tax year.

19 (A) For purposes of this subsection (b)(3), a qualifying  
20 telecommunications company is a telecommunications company that is a  
21 qualifying taxpayer under paragraph (A) of subsection (b)(2).

22 (B) A qualifying telecommunications company shall make the  
23 election under this subsection (b)(3) in the same manner as provided under  
24 paragraph (B) of subsection (b)(2).

25 (4) At the election of a distressed area taxpayer, by multiplying the  
26 business income by the sales factor. The election shall be made by  
27 including a statement with the original tax return indicating that the  
28 taxpayer elects to apply this apportionment method. The election may be  
29 made only once, it must be made on or before December 31, 1999 and it  
30 shall be effective for the taxable year of the election and the following nine  
31 taxable years for so long as the taxpayer maintains the payroll amount  
32 prescribed by subsection (j) of K.S.A. 79-3271, and amendments thereto.

33 (5) At the election of the taxpayer made at the time of filing of the  
34 original return, the qualifying business income of any investment funds  
35 service corporation organized as a corporation or S corporation which  
36 maintains its primary headquarters and operations or is a branch facility  
37 that employs at least 100 individuals on a full-time equivalent basis in this  
38 state and has any investment company fund shareholders resided in this  
39 state shall be apportioned to this state as provided in this subsection, as  
40 follows:

41 (A) By multiplying the investment funds service corporation's  
42 qualifying business income from administration, distribution and  
43 management services provided to each investment company by a fraction,

1 the numerator of which shall be the average of the number of shares  
2 owned by the investment company's fund shareholders resided in this  
3 state at the beginning of and at the end of the investment company's  
4 taxable year that ends with or within the investment funds service  
5 corporation's taxable year, and the denominator of which shall be the  
6 average of the number of shares owned by the investment company's fund  
7 shareholders everywhere at the beginning of and at the end of the  
8 investment company's taxable year that ends with or within the investment  
9 funds service corporation's taxable year.

10 (B) A separate computation shall be made to determine the qualifying  
11 business income from each fund of each investment company. The  
12 qualifying business income from each investment company shall be  
13 multiplied by the fraction calculated pursuant to paragraph (A) for each  
14 fund of such investment company.

15 (C) The qualifying portion of total business income of an investment  
16 funds service corporation shall be determined by multiplying such total  
17 business income by a fraction, the numerator of which is the gross receipts  
18 from the provision of management, distribution and administration  
19 services to or on behalf of an investment company, and the denominator of  
20 which is the gross receipts of the investment funds service company. To  
21 the extent an investment funds service corporation has business income  
22 that is not qualifying business income, such business income shall be  
23 apportioned to this state pursuant to subsection (b)(1).

24 (D) For tax year 2002, the tax liability of an investment funds service  
25 corporation that has elected to apportion its business income pursuant to  
26 paragraph (5) shall be increased by an amount equal to 50% of the  
27 difference of the amount of such tax liability if determined pursuant to  
28 subsection (b)(1) less the amount of such tax liability determined with  
29 regard to paragraph (5).

30 (E) When an investment funds service corporation is part of a unitary  
31 group, the business income of the unitary group attributable to the  
32 investment funds service corporation shall be determined by multiplying  
33 the business income of the unitary group by a fraction, the numerator of  
34 which is the property factor plus the payroll factor plus the sales factor,  
35 and the denominator of which is three. The property factor is a fraction,  
36 the numerator of which is the average value of the investment funds  
37 service corporation's real and tangible personal property owned or rented  
38 and used during the tax period and the denominator of which is the  
39 average value of the unitary group's real and tangible personal property  
40 owned or rented and used during the tax period. The payroll factor is a  
41 fraction, the numerator of which is the total amount paid during the tax  
42 period by the investment funds service corporation for compensation, and  
43 the denominator of which is the total compensation paid by the unitary

1 group during the tax period. The sales factor is a fraction, the numerator of  
2 which is the total sales of the investment funds service corporation during  
3 the tax period, and the denominator of which is the total sales of the  
4 unitary group during the tax period.

5 (F) A taxpayer seeking to make the election available pursuant to  
6 subsection (b)(5) ~~of K.S.A. 79-3279, and amendments thereto,~~ shall only  
7 be eligible to continue to make such election if the taxpayer maintains at  
8 least 95% of the Kansas employees in existence at the time the taxpayer  
9 first makes such an election.

10 (6) At the election of a qualifying taxpayer, by multiplying such  
11 taxpayer's business income by the sales factor. The election shall be made  
12 by including a statement with the original tax return indicating that the  
13 taxpayer elects to apply this apportionment method. The election may be  
14 made only once and must be made on or before the last day of the taxable  
15 year during which the investment described in paragraph (A) is placed in  
16 service, but not later than December 31, 2009, and it shall be effective for  
17 the taxable year of the election and the following nine taxable years or for  
18 so long as the taxpayer maintains the wage requirements set forth in  
19 paragraph (A). If the qualifying taxpayer is a member of a unitary group of  
20 corporations, all other members of the unitary group doing business within  
21 this state shall apportion their business income to this state pursuant to  
22 subsection (b)(1).

23 (A) For purposes of this subsection, a qualifying taxpayer is any  
24 taxpayer making an investment of \$100,000,000 for construction in  
25 Kansas of a new business facility identified under the North American  
26 industry classification system (NAICS) subsectors of 31-33, as assigned  
27 by the secretary of the department of labor, employing 100 or more new  
28 employees at such facility after July 1, 2007, and prior to December 31,  
29 2009, and meeting the following requirements for paying such employees  
30 higher-than-average wages within the wage region for such facility:

31 (i) The taxpayer's new Kansas business facility with 500 or fewer  
32 full-time equivalent employees will provide an average wage that is above  
33 the average wage paid by all Kansas business facilities that share the same  
34 assigned NAICS category used to develop wage thresholds and that have  
35 reported 500 or fewer employees to the Kansas department of labor on the  
36 quarterly wage reports;

37 (ii) the taxpayer's new Kansas business facility with 500 or fewer  
38 full-time equivalent employees is the sole facility within its assigned  
39 NAICS category that has reported wages for 500 or fewer employees to  
40 the Kansas department of labor on the quarterly wage reports;

41 (iii) the taxpayer's new Kansas business facility with more than 500  
42 full-time equivalent employees will provide an average wage that is above  
43 the average wage paid by all Kansas business facilities that share the same

1 assigned NAICS category used to develop wage thresholds and that have  
2 reported more than 500 employees to the Kansas department of labor on  
3 the quarterly wage reports;

4 (iv) the taxpayer's new Kansas business facility with more than 500  
5 full-time equivalent employees is the sole facility within its assigned  
6 NAICS category that has reported wages for more than 500 employees to  
7 the Kansas department of labor on the quarterly wage reports, in which  
8 event it shall either provide an average wage that is above the average  
9 wage paid by all Kansas business facilities that share the same assigned  
10 NAICS category and that have reported wages for 500 or fewer employees  
11 to the Kansas department of labor on the quarterly wage reports, or be the  
12 sole Kansas business facility within its assigned NAICS category that has  
13 reported wages to the Kansas department of labor on the quarterly wage  
14 reports;

15 (v) the number of NAICS digits to use in developing each set of wage  
16 thresholds for comparison purposes shall be determined by the secretary of  
17 commerce;

18 (vi) the composition of wage regions used in connection with each set  
19 of wage thresholds shall be determined by the secretary of commerce; and

20 (vii) alternatively, a taxpayer may wage-qualify its new Kansas  
21 business facility if, after excluding the headcount and wages reported on  
22 the quarterly wage reports to the Kansas department of labor for  
23 employees at that new Kansas business facility who own five percent or  
24 more equity in the taxpayer, the average wage calculated for the taxpayer's  
25 new Kansas business facility is greater than or equal to 1.5 times the  
26 aggregate state-wide average wage paid by industries covered by the  
27 employment security law based on data maintained by the secretary of  
28 labor.

29 (B) For the purposes of the wage requirements in paragraph (A), the  
30 number of full-time equivalent employees shall be determined by dividing  
31 the number of hours worked by part-time employees during the pertinent  
32 measurement interval by an amount equal to the corresponding multiple of  
33 a 40-hour work week and adding the quotient to the average number of  
34 full-time employees.

35 (C) When the qualifying taxpayer is part of a unitary group, the  
36 business income of the unitary group attributable to the qualifying  
37 taxpayer shall be determined by multiplying the business income of the  
38 unitary group by a fraction, the numerator of which is the property factor  
39 plus the payroll factor plus the sales factor, and the denominator of which  
40 is three. The property factor is a fraction, the numerator of which is the  
41 average value of the qualifying taxpayer's real and tangible personal  
42 property owned or rented and used during the tax period and the  
43 denominator of which is the average value of the unitary group's real and



1 tangible personal property owned or rented and used during the tax period.  
2 The payroll factor is a fraction, the numerator of which is the total amount  
3 paid during the tax period by the qualifying taxpayer for compensation,  
4 and the denominator of which is the total compensation paid by the unitary  
5 group during the tax period. The sales factor is a fraction, the numerator of  
6 which is the total sales of the qualifying taxpayer during the tax period,  
7 and the denominator of which is the total sales of the unitary group during  
8 the tax period.

9 (D) For purposes of this subsection, the secretary of revenue, upon a  
10 showing of good cause and after receiving a certification by the secretary  
11 of commerce of substantial compliance with provisions of this subsection  
12 (b)(6), may extend any required performance date provided in this  
13 subsection (b)(6) for a period not to exceed six months.

14 (7) (A) *At the election of a qualifying taxpayer, by multiplying such*  
15 *taxpayer's business income by the sales factor.*

16 (B) *For purposes of this paragraph, a qualifying taxpayer is any*  
17 *taxpayer whose principal business activity in the state is:*

18 (i) *Manufacturing as defined in K.S.A. 79-3271(m)(2), and*  
19 *amendments thereto;*

20 (ii) *production of electricity or storage of electricity as defined in*  
21 *K.S.A. 79-3271(m)(3) and (4), and amendments thereto;*

22 (iii) *certain agricultural activities as defined in K.S.A. 79-3271(m)*  
23 *(1), and amendments thereto;*

24 (iv) *scientific and technical consulting services for a biofuel facility*  
25 *as provided in K.S.A. 79-3271(m)(5), and amendments thereto;*

26 (v) *wholesale distribution of petroleum products as provided in*  
27 *K.S.A. 79-3271(m)(6), and amendments thereto;*

28 (vi) *wholesale trade as provided in K.S.A. 79-3271(m)(7), and*  
29 *amendments thereto; and*

30 (vii) *wireless telecommunications carriers as provided in K.S.A. 79-*  
31 *3271(m)(8), and amendments thereto.*

32 (C) *An election under this paragraph shall be made by including a*  
33 *statement with the original tax return for which the election is made,*  
34 *indicating that the taxpayer elects to apply this apportionment method.*  
35 *The election shall be effective and irrevocable for the taxable year of the*  
36 *election and the following nine taxable years. The election shall be*  
37 *binding on all members of a unitary group of corporations.*  
38 *Notwithstanding the provisions of this paragraph, the secretary of revenue*  
39 *may upon the request of the taxpayer, grant permission to terminate the*  
40 *election under this subsection (b)(7) prior to expiration of the 10-year*  
41 *period.*

42 (c) *On or before March 1, 2028, the secretary of revenue shall submit*  
43 *a written report to the house of representatives committee on taxation and*

1 *the senate committee on assessment and taxation concerning the use of the*  
2 *election pursuant to subsection (b)(7) and the number of taxpayers that*  
3 *have elected the sales factor apportionment in lieu of the standard*  
4 *apportionment provided by law.*

5       Sec. 3. K.S.A. 79-3271 and 79-3279 are hereby repealed.

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