

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2489

As Amended by House Committee on Taxation

Brief*

HB 2489, as amended, would clarify the Multistate Tax Compact (Compact) under Kansas statutory provisions relative to the definition of business income for corporation income tax purposes.

The bill would clarify that relative to tax year 2017 and thereafter, the Compact's provisions are supplemental to the Kansas Income Tax Act (KITA) and are not available as an alternative method of allocating and apportioning business income. The bill would state that should a conflict between the Compact and KITA be determined, KITA would apply.

Additional amendments to the Compact would clarify that for tax year 2008 and thereafter, only the net gain from the sales of certain business assets could be included in the sales factor of the multistate business income distribution formula; and that allocable nonbusiness income would be limited to that total nonbusiness income received, which is in excess of related expenses allowed as deductions.

The bill would clarify that the Compact, since tax year 2008, has not provided a taxpayer election for any separate alternative methodology relative to the determination of business income under the functional test utilized in KITA.

Finally, the bill would prohibit taxpayers from filing amended returns for tax years 2008 through 2016 claiming that an election had existed under the Compact or that certain

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

of the Compact's provisions had been inconsistent with KITA relative to the determination of business income.

Background

The bill was requested for introduction and supported by a representative of the Department of Revenue, who appeared as the only proponent. In the House Committee on Taxation hearing, on February 8, the representative explained that legislation enacted in 2008 had reduced corporation income tax rates but broadened the base under KITA by replacing the transactional test for the determination of business income with the functional test. The conferee further explained that litigation recently has been filed in a number of states suggesting the Compact's provisions provide flexibility in the determination of business income that somehow control over more specifically enacted state law; and that many millions of dollars in refunds potentially could be sought if such litigation were to be filed in Kansas. The conferee added that since the change to KITA in 2008, the assumption has been the churning of investment capital was not to be included in the sales factor of the multistate formula.

The Kansas Chamber, whose representative stated that some of that group's members had expressed concern over the bill's retroactive application, appeared as an opponent. The Council on State Taxation also submitted written-only testimony in opposition.

No other testimony was provided.

The House Committee, on March 7, subsequently adopted a balloon amendment provided by the Department of Revenue designed, in part, to address the concern that had been expressed over retroactivity.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, indicates its enactment would have no direct fiscal effect; however, it has the potential to prevent

large revenue losses if taxpayers were able to assume an alternative set of apportionment rules has been available under the Compact since 2008.